

United States
Court of Appeals
for the Ninth Circuit

G. A. MILLER, W. W. LORD, RALPH SMEED,
L. H. STAUS and JACK SMEED, Trustees of
John W. Smeed Estate, Appellants,

vs.

SAM WAHYOU, DIAMOND-S RANCH CO.,
SAM WAHYOU, R. K. NUTTING and
THOMAS G. LEE, as Trustees for the assets
of Diamond-S Ranch Co., THOMAS G. LEE,
TOY QUONG, JOE SIN, K. R. NUTTING,
YIP K. TOON and HERBERT JANG,
Appellees.

Transcript of Record

Appeal from the United States District Court for the
District of Nevada

FILED

JUN 25 1955

CLERK OF COURT, U.S. DISTRICT COURT, NEVADA

No. 14902

United States
Court of Appeals
for the Ninth Circuit

G. A. MILLER, W. W. LORD, RALPH SMEED,
L. H. STAUS and JACK SMEED, Trustees of
John W. Smeed Estate, Appellants,

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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For Appellees Diamond S. Ranch Co., a
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* Page numbers appearing at foot of page of original Transcript of Record.

In the United States District Court for the
District of Nevada

No. 1029

G. A. MILLER, W. W. LORD, RALPH SMEED,
L. H. STAUS and JACK SMEED, trustees of
JOHN W. SMEED ESTATE, Plaintiffs,

vs.

A. E. CORBARI and MARIE CORBARI, hus-
band and wife, SAM WAHYOU, DIAMOND-S
RANCH CO., a Nevada corporation, SAM
WAHYOU, K. R. NUTTING, THOMAS G.
LEE, A. E. CORBARI, last known directors
of said Diamond - S Ranch Co., a Nevada cor-
poration which has forfeited its charter, as
trustees for said corporation, Defendants.

COMPLAINT

The plaintiffs, for claim against the defendants,
complaint and alleges as follows:

First Count

Plaintiffs, for a first count, allege:

I.

That the plaintiffs are the trustees under the
testamentary trust of John W. Smeed, deceased,
under the will of John W. Smeed, deceased, duly
admitted to probate in the Probate Court of Canyon
County, Idaho, and are residents and citizens of the
State of Idaho.

II.

That the defendants A. E. Corbari and Marie Corbari are husband and wife, and are residents and citizens of the State of Nevada; that the defendant Diamond - S Ranch Co. [2] is a corporation organized under the laws of the State of Nevada, with its principal office at Reno, Nevada, and is a citizen of the State of Nevada; that said Diamond - S Ranch Co. has forfeited its charter, the same having been revoked by the State of Nevada on March 3, 1952. That the last known directors of said corporation are Sam Wahyou, A. E. Corbari, K. R. Nutting and Thomas G. Lee, whose addresses and residences as set out in the last annual list of its officers and directors as filed with the Secretary of State of the State of Nevada is P.O. Box 7, Golconda, Nevada.

III.

That the matter of controversy in this suit exceeds, exclusive of interest and costs, and the sum of \$3,000.00.

IV.

That the defendants A. E. Corbari and Marie Corbari on or about December 31, 1948, made and executed and delivered to John W. Smeed, their certain promissory note, a copy of which is attached hereto, marked Exhibit "A" and made a part hereof; that said John W. Smeed is now deceased and the plaintiffs herein, as trustees under his last will and testament, are now the owners and holders of said note.

V.

That the defendants A. E. Corbari and Marie Corbari owe to the plaintiffs the amount of said note, plus interest [3] less \$750.00 paid on the principal thereof on or about November 22, 1950.

Second Count

Further complaining of the above defendants and for a second count plaintiffs allege:

I.

Plaintiffs reallege all matters contained in Paragraphs I, II, and III and IV and V of said First Count contained in this complaint, and further alleges:

II.

That on or about the 31st day of October, 1950, the Diamond - S Ranch Co. did not exist as a corporation, having been dissolved under the laws of the State of Nevada; that the defendants were the owners of a fractional share, being $310/1572.5$ ths of the assets of the said corporation as tenants in common with other persons who had been stockholders of the said corporation at the time of its dissolution on September 7, 1950; that the value of said fractional share owned by the defendants was not less than \$50,000.00; that on or about October 31, 1950, the defendants A. E. Corbari and Marie Corbari assigned, transferred and set over all of their interest in the assets of the said dissolved Nevada corporation as security for their note, Exhibit "A" to this complaint, copy of which said assignment is at-

tached to this complaint as Exhibit "B" and made a part hereof. That thereafter, on or about the 7th day of December, 1951, the corporate charter of the Diamond - S Ranch Co., a corporation, was revived under the laws of the State of Nevada and the said [4] corporation resumed possession of the assets theretofore owned by those persons who had been stockholders and who had possessed such assets as tenants in common, including the interest of A. E. Corbari and Marie Corbari, as aforesaid, assigned to W. W. Lord, trustee, as aforesaid; that on March 3, 1952, the said Diamond - S Ranch Co., a corporation revived as aforesaid, forfeited its charter, the same being revoked by the State of Nevada.

Third Count

Further complaining of the defendants and for a third count plaintiffs allege:

I.

Plaintiffs reallege all matters contained in Paragraphs I, II, III, IV, and V of the First Count and in Paragraph II of the Second Count, and further allege:

II.

That Sam Wahyou, one of the defendants herein, was a stockholder in the Diamond - S Ranch Co., a Nevada Corporation, at the time of its dissolution; that the defendants A. E. Corbari and Sam Wahyou subsequent to the 31st day of October, 1950, conspired to defraud the plaintiffs of their property under said assignment by causing the charter of the

Diamond - S Ranch Co. to be revived without reflecting in the books and records of the corporation the interest of the defendants, A. E. Corbari and Marie Corbari, in the assets of the said corporation during the period of its dissolved status, and by causing the interest of A. E. Corbari and Marie Corbari to be transferred to the defendant Sam Wahyou, with knowledge of the plaintiffs' interest and with the intent and purpose of depriving the plaintiffs of their rights under said assignment. [5]

Wherefore, Plaintiffs demand:

1. On the first count, that plaintiffs have judgment against defendants A. E. Corbari and Marie Corbari for the sum of \$14,291.34, together with interest on the sum of \$15,041.34, at the rate of five percent per annum from December 31, 1948, to December 31, 1949, and interest on said sum of \$15,041.34 at the rate of eight percent per annum from December 31, 1949, to November 22, 1950, and interest on the sum of \$14,291.34 at the rate of eight percent per annum from November 22, 1950, to date of judgment herein; for \$3500.00 for attorney's fees and for the costs of this action.

2. On the second count, that the assets of the defendant Diamond - S Ranch Co. be ordered by this court to be impressed with a lien by virtue of the assignment from the defendants A. E. Corbari and Marie Corbari, to the plaintiffs to secure the payment of the amount due from the defendants A. E. Corbari and Marie Corbari to the plaintiffs on

the said note up to 310/1572.5ths of the net value of the assets of the said corporation.

3. On the third count, alternatively, that the plaintiffs have judgment against the defendant, Sam Wahyou, in damages for the full amount of the obligation found due and owing to them from the defendants A. E. Corbari and Marie Corbari, including interest, attorneys' fees, and costs, as prayed in Paragraph I of this prayer.

JAMES A. CALLAHAN,
CARVER, McCLENAHAN &
GREENFIELD,
SMITH & EWING,

/s/ By LAURENCE N. SMITH,
Attorneys for Plaintiff.

[6]

Duly Verified. [7]

EXHIBIT "A"

"\$15,041.34 Caldwell, Idaho, December 31st, 1948

On Demand: or if no demand is made, then on December 31st, 1949 after date, I, we, or either of us, promise to pay to John W. Smeed or order, Fifteen Thousand Forty one and 34/1000 Dollars. For value received, negotiable and payable at The First National Bank of Caldwell, Caldwell, Idaho, in Legal Tender of the United States of America, with interest at the rate of five per cent. per annum from date, payable annually, and a reasonable attorney's fee in case this note or any part thereof, is collected by an attorney, either with or without suit. If this note is not paid at maturity it shall there-

after bear interest at the rate of Eight per cent. per annum until paid, both before and after judgment. All makers and endorsers of this note each hereby expressly waive demand, notice of non-payment and protest, and guarantee the payment of this note at maturity or at any time thereafter.

A. E. Corbari

Marie Corbari

No.....

Due Rt. No. 1, Box 42, P.O. Tracy, California [8]

EXHIBIT "B"

ASSIGNMENT

Know All Men By These Presents, That Whereas, I, A. E. Corbari, am indebted on a certain note given to John W. Smeed, dated December 31, 1948, due December 31, 1949, in the principal amount of \$15,041.34, plus interest at the rate of five percent per annum, said interest amounting on October 25, 1950, to the sum of \$1366.08, together with costs incurred in connection therewith in the sum of \$775.00, and the sum of \$2.06 interest per day until the payment of said indebtedness.

Now, Therefore, In consideration of the premises, and to secure the payment of said indebtedness, I do hereby sell, assign, transfer and set over unto W. W. Lord, as Trustee, all my rights, title and interest in and to all of my partnership interest in the assets of a certain partnership formed by reason of the dissolution of Diamond - S Ranch Co., a Nevada corporation, and in and to any profits arising from

the operation of said partnership. I further state that I was the owner of 310 shares of stock in said Diamond - S Ranch Co., and that the total outstanding shares of stock in said Company was 1,572½ shares, and that my interest in the partnership and the assets of the partnership formed in connection with the dissolution of said Company, is in the same proportion as was my holding of stock in the total outstanding issue thereof. And I hereby grant unto said W. W. Lord, as Trustee, full power, in my name or otherwise, to hold and operate said partnership interest, and the assets thereof, in the same manner as I could personally do, until the payment in full of said indebtedness and any other costs which may be incurred in connection with any transaction regarding collection of said indebtedness.

This assignment is made upon the express condition that if I shall pay or cause to be paid to the said W. W. Lord, as trustee, his successor or assigns, the above-recited indebtedness on or before April 25, 1951, then this assignment shall be void and of no effect.

In case the said W. W. Lord, as trustee, his successors or assigns, shall collect the moneys due on the said indebtedness he or they shall, after retaining the full amount of the above indebtedness, and the reasonable costs and expenses of collection, pay over the surplus, if any, to me, or my successors, administrators, or assigns.

In case of nonpayment of said indebtedness on or before April 25, 1951, I hereby appoint and con-

stitute said W. W. Lord, as trustee, his successors or assigns, my attorney, irrevocable, with power of substitution, to take possession of, and if he so desires, to sell at any time after said payment is due, with or without notice, at the option of said Trustee, the whole or any part of said security, either at public or private sale, at his discretion, and the proceeds thereof to be applied on the payment of said indebtedness, and any surplus after payment of said indebtedness and expenses to be subject to my order. In like manner I agree to pay on demand to said W. W. Lord, as trustee, his successors or assigns, whatever deficit may result after applying the net proceeds of such sale to the payment of said indebtedness.

And I, Marie Corbari, the wife of said A. E. Corbari, hereby join in this assignment and consent thereto, to the same extent as [9] though named in the body of said assignment.

In Witness Whereof, We have hereunto set our hands and seals, this 31 day of October, 1950.

[Seal]	A. E. Corbari
	A. E. Corbari
[Seal]	Marie Corbari
	Marie Corbari

State of California,
County of San Joaquin—ss.

On this 31 day of October, 1950, before me, Wm. Larsen, a Notary Public in and for said State, personally appeared A. E. Corbari and Marie Corbari,

husband and wife, known to me to be the persons whose names are subscribed to the foregoing instrument, and acknowledged to me that they executed the same.

In Witness Whereof, I have hereunto set my hand and affixed my official seal, the day and year in this certificate first above written.

[Seal] Wm. Larsen,
Notary Public for California, Residing at Tracy,
California.

Assignment

A. E. Corbari to W. W. Lord, Trustee

(C) Dated October 31, 1950 (I)

Recorded at request of Smith & Ewing March 27, 1951 at 15 Min. past 9 o'clock A.M. Book I page 175 Leases & Contracts Records of Humboldt Co., Nev.

J. L. Germain, County Recorder
....., Deputy

No. 84745

Return to Smith & Ewing, Box 111, Caldwell, Idaho. [10]

[Endorsed]: Filed August 19, 1952.

[Title of District Court and Cause.]

ANSWER OF DEFENDANT DIAMOND-S
RANCH CO., a Nevada Corporation

Now comes the Defendant Diamond-S Ranch Co., a Nevada Corporation, and answering the allegations contained in the First Count set forth in the Complaint on file herein, admits, denies and alleges as follows:

I.

Answering the allegations set forth in Paragraph I of said First Count, this Defendant has no information or belief sufficient to enable it to answer said allegations, and basing its denial upon such lack of information or belief, denies each and every, all and singular, the allegations therein contained.

II.

Answering the allegations contained in Paragraph II of the First Count, this Defendant admits that the Defendants A. E. Corbari and Marie Corbari are husband and wife and are residents and citizens of the State of Nevada and that the Diamond-S Ranch Co. is a corporation organized and existing under the laws of the State of Nevada with its principal office at Reno, Nevada, and is a citizen of the State of Nevada; alleges that the said Diamond-S Ranch Co. failed to file with the Secretary of State of Nevada a list of the Officers and Directors and Designation of its Resident Agent in this State for the period commencing July 1, 1951, as

required by Section 1, Chapter 180, of the General Corporation Laws of 1925, as amended, (Paragraph 1804 of the Domestic and Foreign Corporation Laws of the State of Nevada), and that by reason thereof it forfeited its right to carry on business in the State of Nevada, but that on the 11th day of September, 1952, said Corporation cured said default as provided in Section 6 of Chapter 180, of the General Corporation Laws of 1925, as amended (Paragraph 1809 of the Domestic and Foreign Corporation Laws of the State of Nevada), whereupon its Charter was reinstated and said reinstatement expressly authorized said Corporation to transact business in the same manner as if the filing fee or the license tax had been paid when due, and that by reason of said reinstatement, said Corporation was restored to all of its powers, property, etc., the same as if no forfeiture had occurred, and that on said 11th day of September, 1952, the Secretary of State of the State of Nevada issued his Certificate of Reinstatement as provided in Section 6 of Chapter 180, of the General Corporation Laws of 1925, as amended (Paragraph 1809 of the Domestic and Foreign Corporation Laws of the State of Nevada); that except as expressly herein admitted, denies each and every, all and singular, the balance of the allegations contained in Paragraph II of said First Count. [12]

III.

Answering the allegations contained in Paragraph IV of said First Count, this Defendant has no information or belief sufficient to enable it to

answer said paragraph, and basing its denial upon such lack of information or belief, denies each and every, all and singular, the allegations therein contained;

IV.

Answering the allegations contained in Paragraph V of said First Count, this Defendant has no information or belief sufficient to enable it to answer said allegations, and basing its denial upon such lack of information or belief, denies each and every, all and singular, the allegations therein contained.

Answering the allegations contained in the Second Count set forth in said Complaint, this Defendant admits, denies and alleges as follows, to-wit:

I.

This Defendant re-alleges herein, the same as if herein again fully set forth, this Defendant's answer to Paragraphs I, II, IV and V of the First Count set forth in Plaintiff's Complaint which are incorporated by reference in Paragraph I of the Second Count of said Complaint.

II.

Answering the allegations contained in Paragraph II of said Second Count, this Defendant alleges that on September 7, 1950, said Diamond-S Ranch Co. filed a Certificate of Dissolution in the Office of the Secretary of State of the State of Nevada and that on December 7, 1951, said Cor-

poration, having elected to renew and revive said Corporate Charter, filed in the Office of the Secretary of State of Nevada its Certificate of Renewal and Revival of its Corporate Charter, and said Certificate provided that said renewal [13] or revival of the Corporate Charter of said Corporation was to be effective September 7, 1950, in accordance with Section 93 (3), Chapter 177, General Corporation Law of 1925, as amended (Chapter 1692 of the Domestic and Foreign Corporation Laws of the State of Nevada), and that by reason of said revival or renewal, said Diamond-S Ranch Co. is, and at all times herein mentioned was, a corporation organized and existing under and by virtue of the laws of the State of Nevada and authorized to transact the business of said Corporation; that except as expressly herein admitted, this Defendant denies each and every, all and singular, the balance of the allegations contained in said Paragraph II of said Second Count; denies that any fractional share whatsoever was owned by the Defendants or any of them or was worth not less than \$50,000.00 or any other sum or at all;

Answering the allegations contained in the Third Count set forth in said Complaint, this Defendant admits, denies and alleges as follows, to-wit:

I.

This Defendant re-alleges herein, the same as if herein again fully set forth, this Defendant's answers to Paragraph I, II, IV and V of the First Count set forth in Plaintiff's Complaint which are

incorporated by reference in Paragraph I of the Third Count and, likewise, re-alleges herein, the same as if herein again fully set forth, this Defendant's answer to Paragraph II of Plaintiffs' Second Count set forth in said Complaint which is incorporated by reference in said Paragraph I of said Third Count.

II.

Answering the allegations contained in Paragraph II of said Third Count, this Defendant alleges that Sam Wahyou, one of the Defendants herein, was and is a stockholder in the Diamond-S Ranch Co., a Nevada Corporation, and further alleges that said Sam Wahyou [14] purchased the corporate stock previously owned by A. E. Corbari, to-wit: 310 Shares, on May 21, 1951, for a valuable consideration, and without notice of any claims of Plaintiffs, if any they had; that except as expressly herein admitted, denies each and every, all and singular, the balance of the allegations therein contained.

As and for a First and Affirmative Defense this Defendant alleges as follows:

I.

That said Complaint, and each and every count thereof, fails to state a claim against his answering Defendant upon which relief can be granted.

Wherefore, this Defendant prays that Plaintiffs take nothing by virtue of their Complaint and that

it be dismissed hence with its costs of Court herein incurred.

/s/ JOHN DAVIDSON,

Attorney for Defendant Diamond-S Ranch Co., a
Nevada Corporation. [15]

Duly Verified. [16]

[Endorsed]: Filed September 20, 1952.

[Title of District Court and Cause.]

ANSWER OF DEFENDANTS, A. E. CORBARI
AND MARIE CORBARI

Comes Now the defendants, A. E. Corbari and Marie Corbari, by and through their attorney John S. Halley, and for answer and defense to plaintiffs' complaint, on file herein, admit, deny and aver as follows:

I.

Answering the allegations contained in paragraph I of the first count of said complaint, the said defendants allege that they are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in [17] said paragraph.

II.

Answering the allegations contained in paragraph II of the first count of said complaint, the said defendants admit that they are husband and wife, and are residents and citizens of the State of Nevada, and that Diamond-S Ranch Co. is a cor-

poration organized under the laws of the State of Nevada, with its principal office therein, and is a citizen of the State of Nevada.

Further answering said allegations, the said defendants allege that the said Diamond-S Ranch Co. failed to file with the Secretary of State of Nevada a list of the Officers and Directors and Designation of its Resident Agent in this State for the period commencing July 1, 1951, as required by Section 1, Chapter 180, of the General Corporation Laws of 1925, as amended, (paragraph 1804 of the Domestic and Foreign Corporation Laws of the State of Nevada), and that by reason thereof it forfeited its right to carry on business in the State of Nevada, but that on the 11th day of September, 1952, said Corporation cured said default as provided in Section 6 of Chapter 180, of the General Corporation Laws of 1925, as amended (Paragraph 1809 of the Domestic and Foreign Corporation Laws of the State of Nevada), whereupon its Charter was reinstated and said reinstatement expressly authorized said Corporation to transact business in the same manner as if the filing fee or the license tax had been paid when due, and that by reason of said reinstatement, said Corporation was restored to all of its powers, property, etc., the same as if no forfeiture had occurred, and that on said 11th day of September, 1952, the Secretary of State of the State of Nevada issued his Certificate of Reinstatement as provided in [18] Section 6 of Chapter 180 of the General Corporation Laws of 1925, as amended (Paragraph 1809 of the Domestic and For-

eign Corporation Laws of the State of Nevada); that except as expressly herein admitted, denies each and every, all and singular, the balance of the allegations contained in paragraph II of the First Count.

III.

Answering the allegations contained in paragraph IV of the first count of said complaint, these defendants admit that on or about the 31st day of December, 1948, they made, executed and delivered to John W. Smeed the promissory note herein referred to, and allege that they are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in said paragraph.

IV.

Answering the allegations contained in paragraph V of the first count of said complaint, these defendants deny they owe to plaintiffs the amount of said note, plus interest, less Seven Hundred Fifty Dollars (\$750.00) paid on the principal thereof on or about November 22, 1950, and allege that they have paid thereon the further sum of One Thousand Dollars (\$1,000.00), plus interest, and allege that they have paid the plaintiffs on account of said note the total sum of One Thousand Seven Hundred Fifty Dollars (\$1,750.00), plus interest.

Answering the Allegations Contained in the Second Count of said Complaint, These Defendants Admit, Deny and Aver as follows:

I.

Answering the allegations contained in paragraph I of the second count of said complaint, these defendants re-allege [19] at this place as if set forth in haec verba their answers to paragraphs I, II, III, IV, and V of the first count of said complaint.

II.

Answering the allegations contained in paragraph II of the second count of said complaint, these defendants admit that on the 31st day of October, 1950, they executed and acknowledged the assignment, copy of which is attached to said complaint as Exhibit "B".

Further answering the allegations contained in said paragraph, these defendants allege that on September 7, 1950, said Diamond-S Ranch Co. filed a Certificate of Dissolution in the Office of the Secretary of State of the State of Nevada and that on December 7, 1951, said Corporation, having elected to renew and revive said Corporate Charter, filed in the Office of the Secretary of State of Nevada its Certificate of Renewal and Revival of its Corporate Charter, and said Certificate provided that said renewal or revival of the Corporate Charter of said Corporation was to be effective September 7, 1950, in accordance with Section 93 (3), Chapter 177, General Corporation Law of 1925, as amended (Chapter 1692 of the Domestic and Foreign Corporation Laws of the State of Nevada).

Answering the Allegations Contained in the Third Count of Said Complaint, These Defendants Admit, Deny and Aver as follows:

I.

Answering the allegations contained in paragraph I of the Third Count of said complaint, these defendants re-allege as if set forth at this place haec verba their answers [20] to paragraphs I, II, III, IV and V of the first count, and paragraph I of the second count of said complaint.

II.

Answering the allegations contained in paragraph II of the Third Count of said complaint, these defendants deny each and every, all and singular, the allegations therein contained, except that they admit that Sam Wahyou was a stockholder in the Diamond-S Ranch Co. on the 7th day of September, 1950.

Wherefore, these defendants pray that plaintiffs take nothing by reason of their complaint, that the same be dismissed, and that they have their costs and expenditures.

/s/ JOHN S. HALLEY,

Attorney for Defendants, A. E.

Corbari and Marie Corbari [21]

[Endorsed]: Filed November 10, 1952.

[Title of District Court and Cause.]

MOTION

Come Now the plaintiffs and move this Honorable Court for leave to file a First Amended Complaint herein, copy of which proposed Amended Complaint is attached hereto, and adding new parties as shown therein, and for cause therefor, state:

That facts learned from the taking of discovery depositions herein make it desirable and necessary that additional counts be stated and that additional persons be made parties defendant.

Dated this 25th day of May, 1954.

SMITH & EWING,
CARVER, McCLENAHAN &
GREENFIELD,
PIKE & McLAUGHLIN,

/s/ By MILES N. PIKE,
Attorneys for Plaintiffs [22]

NOTICE OF MOTION

To: A. E. Corbari and Marie Corbari, Defendants above named, and to John S. Halley, Esq., their attorney, and to Diamond-S Ranch Co., Defendant above named, and to John Davidson, Esq., its attorney:

Please Take Notice, that the undersigned will bring the above Motion on for hearing before this Court at Carson City, Nevada, on Monday, the 7th

day of June, 1954, at 10 o'clock in the forenoon of that day or as soon thereafter as counsel can be heard.

SMITH & EWING,
CARVER, McCLENAHAN &
GREENFIELD,
PIKE & McLAUGHLIN,

/s/ By MILES N. PIKE,
Attorneys for Plaintiffs

Acknowledgment of Service attached. [23]

[Endorsed]: Filed May 26, 1954.

[Title of District Court and Cause.]

ORDER GRANTING MOTION FOR LEAVE TO FILE AMENDED COMPLAINT

This matter came on for hearing this 12th day of October, 1954, upon the motion of the plaintiffs for leave to file an amended complaint, Miles N. Pike and Laurence N. Smith appearing for plaintiffs, John Davidson and Gordon J. Aulik appearing for the defendant, Diamond-S Ranch Co., and John S. Halley appearing for the defendants, A. E. Corbari and Marie Corbari.

The matter being argued was submitted to the Court for determination, and after due consideration it is

Ordered that said motion for leave to file an amended complaint be and it is hereby granted.

It is further Ordered that pretrial be continued

until such time as responsive pleadings have been filed to the amended complaint.

Dated: October 12th, 1954.

/s/ JOHN R. ROSS,

United States District Judge [39]

[Endorsed]: Filed November 12, 1954.

[Title of District Court and Cause.]

FIRST AMENDED COMPLAINT

The plaintiffs, for claim against defendants, complain and allege as follows:

First Count

The plaintiffs, for a First Count, allege:

I.

That plaintiffs, G. A. Miller, W. W. Lord, Ralph Smeed, L. H. Staus and John H. Smeed are the trustees under the testamentary trust of John W. Smeed, deceased, under his will, duly admitted to probate in the Probate Court of Canyon County, Idaho, and are residents and citizens of the State of Idaho.

II.

That defendants, A. E. Corbari, otherwise known as Archie E. Corbari, and Marie Corbari are husband and wife, and are [40] citizens of the State of Nevada; that defendant, Sam Wahyou, individually

and as trustee, is a resident and citizen of the State of California; that defendant, Diamond S. Ranch Co., was incorporated under the laws of the State of Nevada and holds itself out as being a Nevada corporation at the present time; that if defendant corporation is in existence at all at present, it has its principal office at Galconda, Nevada, and is a citizen of the State of Nevada; that defendant, Forrest E. Macomber, is a resident and citizen of the State of California; that defendants, K. R. Nutting and Thomas G. Lee, trustees, are residents and citizens of the State of California; and that defendants, Thomas G. Lee, Toy Quong, Joe Sin, K. R. Nutting, Yip K. Toon, Herbert Jang, otherwise known as Herbert Jong, and D. W. Zignego are citizens and residents of the State of California.

III.

That the matter of controversy in this suit exceeds, exclusive of interest and costs, the sum of \$3,000.00.

IV.

That said defendants, A. E. Corbari and Marie Corbari, on or about December 31, 1948, made and executed and delivered to John W. Smeed, their certain promissory note, a copy of which is attached hereto marked Exhibit "A" and made a part hereof; that said John W. Smeed is now deceased and the plaintiffs, herein, as trustees under his last will and testament, are now the owners and holders of said note.

V.

That neither of the defendants Corbari, numbered 1 and 2, paid said note or any part thereof on December 31, 1949 and it became necessary to place said note in the hands of an attorney for collection; that said defendants or one of them paid plaintiffs \$750.00 on account of the principal of said note or on or about November 22, 1950, but neither of said defendants, nor anyone else has made any other payments on account of said note although [41] repeated demands have been made upon said defendants that the same be paid; and that it became necessary to file this suit to collect said note.

VI.

That said defendants Corbari owe to plaintiffs the amount of said note less said payment, namely, the sum of \$14,291.34, plus interest at 5% per annum on the sum of \$15,041.34 from December 31, 1948 to December 31, 1949, plus interest on \$15,041.34 at 8% per annum from December 31, 1949 until November 22, 1950, plus interest on \$14,291.34 at 8% per annum from November 22, 1950, until paid, plus a reasonable attorney's fee for services rendered to collect said note.

Second Count

Further complaining of the above defendants and for a Second Count, plaintiffs allege:

I.

Plaintiffs reallege all matters contained in said First Count of this complaint, and further allege:

II.

That on the 7th day of September, 1950, defendant number 4, Diamond S. Ranch Co., was duly incorporated as a corporation under the laws of the State of Nevada and was and had been doing business as a ranching corporation under said laws. On that day said defendant corporation filed with the Secretary of State of Nevada the papers necessary to effect a voluntary dissolution of said corporation under the provisions of Section 1664 (64) of the code of laws of the State of Nevada, the Secretary issued this certificate therein provided for that said corporation was dissolved, and on that day said corporation was dissolved.

III.

That upon the day said corporation was dissolved, defendants A. E. Corbari, Sam Wahyou, K. R. Nutting and Thomas G. Lee, were [42] the duly elected and qualified directors of said corporation and under the provisions of Section 1665 (65) of said code became trustees of the assets of said corporation with the powers and duties of such trustees as are provided by law.

IV.

That upon said day said corporation owned the property situated in Humboldt County, Nevada, described in Exhibit "C" to this First Amended Complaint, attached hereto and made a part hereof, and the then stockholders of said corporation became owners of said property.

V.

That upon said day the stockholders of said cor-

poration were the following named persons and they owned the number of shares hereinafter set opposite their names, and the total of 1572.5 shares owned by them was all of the stock of said corporation issued and outstanding:

Defendant Sam Wahyou	321
Defendant Thomas G. Lee	80
Defendant Toy Quong	50
Defendant Joe Sin	521½
Defendant A. E. Corbari	310
Defendant K. R. Nutting	629
Defendant Yip K. Toon	50
Defendant Herbert Jang or Jong	80

Total 1,572½

VI.

That on or about the 22nd day of February, 1950, defendant A. E. Corbari agreed with plaintiffs for a valuable consideration to assign his interest in the defendant corporation to plaintiffs to secure the note, Exhibit "A" herein; that on or about October 31, 1950, said assignment was reduced to writing and signed by said defendants A. E. Corbari and Marie Corbari, a copy of which said assignment is attached hereto as Exhibit "B" and made a part hereof; and that said assignment was recorded March 27, 1951, among the Humboldt County, Nevada records; and that defendants [43] Wahyou and Macomber had notice and knowledge of said agreement prior to their actions complained of herein.

VII.

That after said dissolution, defendants A. E. Corbari, Wahyou, Nutting and Lee, and each of them, willfully, maliciously and fraudulently failed to carry out the duty of each of them as fiduciaries to settle the affairs of the dissolved corporation, collect its outstanding debts, pay its creditors and distribute and pay the balance of its assets among the persons who had been stockholders of the corporation or their legal representatives, but continued the business for which said corporation had been established, and their failure and breach of duty has continued to this day, and they wrongfully used the assets of said corporation for that purpose.

VIII.

That defendants, A. E. Corbari, Wahyou, Nutting and Lee, in violation of their duties as fiduciaries and in furtherance of their unlawful action aforesaid, falsely and fraudulently caused to be executed and filed on December 7, 1951, with the Secretary of State of Nevada a so-called certificate of revival or renewal of corporate charter of said corporation in which they admitted that they were carrying on such business; that by said certificate and an affidavit called "Appointment of Agents" filed therewith, defendants, Nutting, Wahyou, Lee, Jang or Jong, Quong, Sin and Toon falsely and fraudulently represented and swore, under oath, that the execution and filing of said certificate was authorized by the written and unanimous consent of all of the stockholders of said corporation, and the

names of said stockholders were therein set forth, together with the number of shares of said corporation entitled to vote held by each of them, when in matter of fact and law there were no stockholders entitled to vote after the dissolution of the corporation, and, if there were, the successors in interest to Corbari's shares in the [44] corporation were not mentioned in said papers nor had such successors in interest given any consent to said papers or the filing thereof; and that in said papers the said defendants further falsely represented and swore under oath that defendant Wahyou was the owner of 631 shares of the corporate stock when as a matter of fact he only owned 321 shares, if he owned any.

IX.

~~That the actions of defendants complained of in this count have hindered and delayed the payment of the obligation due plaintiffs and defrauded them.~~

Third Count

Further complaining of the defendants and for a Third Count, plaintiffs allege:

I.

Plaintiffs reallege all matters contained in the First and Second Counts of this First Amended Complaint.

II.

Plaintiffs allege that at a time when defendant corporation was in a state of dissolution, to-wit, on or about May 21, 1951, defendant Wahyou, acting through his agent and attorney, defendant Macom-

ber, purported to purchase at a so-called pledge foreclosure sale the 310 shares of stock of defendant, A. E. Corbari, in said corporation; that said supposed sale of said stock took place in Stockton, California, where the certificates allegedly evidencing the ownership of said shares had their situs; that this purported sale was conducted by defendant Macomber as agent for defendant Wahyou without notice to plaintiffs or knowledge of the same by them and at a time when defendants Wahyou and Macomber well knew of plaintiffs' interest in defendant corporation, as aforesaid; that the purchaser of said certificates was one Gordon J. Aulik as agent for defendant Wahyou; that said purported sale [45] of stock to defendant Wahyou was illegally conducted, fraudulent and invalid, and ineffective to transfer to defendant Wahyou any interest in defendant corporation, or for any purpose.

III.

~~Plaintiffs also allege that if this sale did transfer~~ any interest of defendants Corbari in said corporation or in its assets, or stock, defendants Macomber and Wahyou violated the duties created by their fiduciary relationship as trustees and attorney for the trustee; and that Sections 2224, 2228, 2229, 2230, 2231, 2232, 2233, 2234, 2235, and 2237 of the code of laws of the State of California applied; that the pertinent portions of said Sections are set forth in Exhibit "D" attached hereto and made a part hereof; and that said Sections were in full force and effect at the time of said sale.—

Fourth Count

Further complaining of defendants and for a Fourth Count, plaintiffs allege:

I.

Plaintiffs reallege all matters contained in the First, Second and Third Counts of this First Amended Complaint.

II.

Plaintiffs are informed and believe, and therefore allege, that defendants Zignego and Macomber assert an interest in the defendant corporation and its assets by reason of a purported pledge of defendant Corbari of his 310 shares of stock; that any such pledge was invalid and ineffective to pass any such interest; and that if such pledge did pass any such interest, it became ineffective and was discharged.

III.

That defendants, A. E. Corbari, Wahyou and Macomber, and each of them, have conspired each with the other to hinder, delay and defraud plaintiffs by such purported pledge and by the [46] acts complained of in this complaint and to deprive plaintiffs of their rights under the said assignment to them; and that the acts of said defendants pursuant to said conspiracy have hindered and delayed and defrauded plaintiffs.

Wherefore, plaintiffs demand:

1. Judgment against defendants Corbari for the

sum of \$14,291.34, together with interest on the sum of \$15,041.34 at 5% per annum from December 31, 1948 to December 31, 1949, interest on the sum of \$15,041.34 at 8% per annum from December 31, 1949 to November 22, 1950, interest on the sum of \$14,291.34 at 8% per annum from November 22, 1950, until paid, a reasonable attorney's fee for representing plaintiffs in attempting to collect said note and prosecuting this action and the costs thereof.

2. That defendant trustees be removed and a receiver be appointed to take over the assets of the former corporation Diamond S. Ranch Co., wind up its affairs, pay its debts and distribute the balance of its assets among those entitled.

3. That this court decree that plaintiffs have a proportionate interest in the property described in this complaint and in any other assets of said former corporation.

4. That this court require defendants Corbari, Wahyou, Nutting, Lee, Quong, Sin, Toon and Jang or Jong, and each of them, to account for any property described herein and any property received by them, or any of them, from the former or present corporation Diamond S. Ranch Co., and for any property coming into their hands through said former or present corporation, or through the operation of the business for which it was organized, or through the conduct of any business in its name or any similar name.

5. That this court enjoin said defendants, and

each of them, pendente lite and permanently, from disposing of any such [47] property in their, or any of their, possession, charge, or control until the claims of plaintiffs and others interested in such property be satisfied.

6. That the assets of said former or present corporation be ordered by this court to be impressed with a lien for the payment of the obligation due plaintiffs described in the first prayer hereof.

7. That the court order the property and assets to which the lien of plaintiffs has attached, sold, and plaintiffs paid from the net assets of the sale.

8. That plaintiffs have judgment against defendants Wahyou, Macomber, Nutting, Lee, Quong, Sin, Toon and Jang or Jong, and each of them, for the payment of said obligation.

9. For such other and further relief as to the court may seem meet and proper.

SMITH & EWING,
CARVER, McCLENAHAN &
GREENFIELD,
PIKE & McLAUGHLIN,

/s/ By GEORGE C. GREENFIELD,
Attorneys for Plaintiffs

Duly Verified. [48]

[Printer's Note: Exhibit "A" and "B" are duplicates of Exhibit "A" and "B" attached to Complaint set out at pages 8 to 12.]

EXHIBIT "C"

In Humboldt County, Nevada:

Parcel No. 1

Twp. 35 N. R. 39 E. Mt. Diablo Meridian: Section 22: $E\frac{1}{2}$ $NE\frac{1}{4}$; Section 23: West Half; Section 27: East Half.

Twp. 36 N. R. 39 E.: Section 13: All; Section 14: $N\frac{1}{2}$ $NE\frac{1}{4}$; Section 24: All.

Twp. 36 N. R. 40 E.: Section 18: $W\frac{1}{2}$ $SW\frac{1}{4}$ and $SE\frac{1}{4}$ $SW\frac{1}{4}$; Section 19: All; Section 20: $W\frac{1}{2}$; $SW\frac{1}{4}$ of $SE\frac{1}{4}$, and that portion of the $SE\frac{1}{4}$ $SE\frac{1}{4}$ lying Westerly of the Golconda-Paradise Valley County Road leading from the Central Pacific Railroad to the steel bridge across the Humboldt River.

Also, that portion of the $SW\frac{1}{4}$ $NE\frac{1}{4}$ and $N\frac{1}{2}$ $SE\frac{1}{4}$ of said Section 20 described as follows: Commencing at the SE corner of $NE\frac{1}{4}$ $SE\frac{1}{4}$ of said Sec. 20; thence North along the East line of said Section a distance of 214.5 feet; thence North 45 deg 1' 30" West a distance of 1327.1 feet to a point 100 feet Southwesterly from an old ditch 2' x 2' x 6'; thence North 67 deg. 56' 30" West 1226.3'; thence N. 74 deg. 28' West 648.9' to a point 100 feet SWrly from an old ditch; thence S. 0 deg. 7' E. 1810.5; thence North 89 deg. 30' E. 2698.8' to the point of beginning.

Section 21: A portion of $W\frac{1}{2}$ of $SW\frac{1}{4}$.

Section 22: All of $SW\frac{1}{4}$ $SW\frac{1}{4}$.

Section 28: $NE\frac{1}{4}$; $E\frac{1}{2}$ $NW\frac{1}{2}$; also a portion of $SE\frac{1}{4}$ and a portion of $E\frac{1}{2}$ of $SW\frac{1}{4}$.

Section 29: $W\frac{1}{2}$; also a portion of $E\frac{1}{2}$.

Section 30: $N\frac{1}{2}$ of $NE\frac{1}{4}$; $SE\frac{1}{4}$ $NE\frac{1}{4}$; $E\frac{1}{2}$ of $SE\frac{1}{4}$.

Section 32: $NW\frac{1}{4}$, excepting that portion heretofore conveyed to Golconda Cattle Company by deed, Book 44 page 401, records of Humboldt County, Nevada.

Section 34: $N\frac{1}{2}$ $NW\frac{1}{4}$; $NW\frac{1}{4}$ $NE\frac{1}{4}$.

Section 36: $NW\frac{1}{4}$ $NW\frac{1}{4}$.

Right for Easement in and to tract of land in $SE\frac{1}{4}$ $NW\frac{1}{4}$ Sec. 30, Twp. 36 N. 41 E. for the purpose of storing and conserving water.

Town of Golconda:

Lots 1, 2, 3, 4, 15, 16, 17, 18, in Block 2;

Lots 1 and 18, Block 3;

Lots 1, 2, 14, 15, 16, 17, Block 4;

Lot 5, Block 6:

All in the Town of Golconda, Humboldt County, according to the official plat of said Town as the same is filed in the office of the County Recorder of said Humboldt County. [52]

Parcel No. 2

Twp. 36 N. R. 39 E. Mt. Diablo Meridian:

Section 12: $E\frac{1}{2}$ $SE\frac{1}{4}$.

Twp. 36 N. R. 40 E.:

Section 7: $S\frac{1}{2}$.

Section 8: $S\frac{1}{2}$.

Section 16: $W\frac{1}{2}$.

Section 17: All.

Section 18: $SE\frac{1}{4}$ $SE\frac{1}{4}$; $N\frac{1}{2}$ $SE\frac{1}{4}$, NE, S of $NW\frac{1}{4}$ (says this is exactly as it was written), $N\frac{1}{2}$,

NW $\frac{1}{4}$, and a portion of SW $\frac{1}{4}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$ and SW $\frac{1}{4}$ of SE $\frac{1}{4}$ (described by metes and bounds).

Section 20: Portion of NE $\frac{1}{4}$ and portion of N $\frac{1}{2}$ of SE $\frac{1}{4}$.

Section 21: Portion of NW $\frac{1}{4}$ and portion of N $\frac{1}{2}$ of SW $\frac{1}{4}$.

Section 27: All.

Also, a strip of land 40 feet in width adjoining the right-of-way of Western Pacific Railroad on the SWrly side and commencing at the Golconda-Paradise Valley road near where said road crosses the track of said railway company and running North-easterly along said r/w for a distance of 3705 feet to where said road crosses said track of said company; thence 40 feet in width along the Northeast-erly side of said r/3; running Northwesterly to the North line of Sec. 13, Twp. 36 N.R. 39 E. Mt. D.

Total acreage of Parcel No. 2: 3197.69 acres.

Parcel No. 3

Twp. 35 N.R. 39 E.

Section 14: S $\frac{1}{2}$ SE $\frac{1}{4}$.

Section 16: S $\frac{1}{2}$ SE $\frac{1}{4}$; S $\frac{1}{2}$ SW $\frac{1}{4}$.

Section 20: N $\frac{1}{2}$ NE $\frac{1}{4}$.

Section 22: NW $\frac{1}{4}$ NE $\frac{1}{4}$; N. 2 NW $\frac{1}{4}$; W $\frac{1}{2}$ SE $\frac{1}{4}$; SE $\frac{1}{4}$ SW $\frac{1}{4}$.

Section 28: NE $\frac{1}{4}$ NW $\frac{1}{4}$; SW $\frac{1}{4}$ NW $\frac{1}{4}$; NW $\frac{1}{4}$ SW $\frac{1}{4}$.

Twp. 35 N. R. 40 E:

Section 7: N $\frac{1}{2}$ SW $\frac{1}{4}$. [53]

EXHIBIT "D"

Sec. 2224. "One who gains a thing by * * * the violation of a trust is, unless he has some other and better right thereto, an involuntary trustee of the thing gained for the benefit of the person who would otherwise have had it."

Sec. 2228. "Trustee's obligation to good faith. In all matters connected with his trust, a trustee is bound to act in the highest good faith toward his beneficiary, and may not obtain any advantage therein over the latter by the slightest misrepresentation, concealment, threat, or adverse pressure of any kind."

Sec. 2229. "Trustee not to use property for his own profit. A trustee may not use or deal with the trust property for his own profit or for any other purpose unconnected with the trust, in any manner."

Sec. 2230. "Certain transactions forbidden. Neither a trustee nor any of his agents may take part in any transaction concerning the trust in which he or anyone for whom he acts as agent has an interest, present or contingent, adverse to that of his beneficiary, except as follows:

1. When the beneficiary, having capacity to contract, with a full knowledge of the motives of the trustee, and of all other facts concerning the transaction which might affect his own decision and without the use of influence on the part of the trustee permits him to do so;"

Sec. 2231. "Trustee's influence not to be used for his advantage. A trustee may not use the influence

which his position gives to him to obtain any advantage from his beneficiary.”

Sec. 2232. “Trustee not to assume a trust adverse to interest of beneficiary. No trustee, so long as he remains in the trust, may undertake another trust adverse in its nature to the interest of his beneficiary in the subject of the trust, without the consent of the latter.”

Sec. 2233. “To disclose adverse interest. If a trustee acquires any interest, or becomes charged with any duty, adverse to the interests of his beneficiary in the subject of the trust, he must immediately inform the latter thereof, and may be at once removed.”

Sec. 2234. “Trustee guilty of fraud, when. Every violation of the provisions of the preceding sections of this article is a fraud against the beneficiary of a trust.”

Sec. 2235. “Presumption against trustee. All transactions between a trustee and his beneficiary denying the existence of the trust, or while the influence acquired by the trustee remains, by which he obtains any advance from his beneficiary, are presumed to be interested into by the latter without sufficient consideration, and under undue influence.”

Sec. 2237. “Measure of liability for breach of trust. A trustee who uses or disposes of the trust property contrary to section two thousand two hundred and twenty-nine, may, at the option of the beneficiary, be required to account for all profits so made, or to pay the value of its use, and, if he has

disposed thereof, to replace it, with its fruits, or to account for the proceeds with interest." [54]

[Endorsed]: Filed October 21, 1954.

[Title of District Court and Cause.]

ANSWER OF DIAMOND-S RANCH CO. TO
FIRST AMENDED COMPLAINT

Now comes the Defendant Diamond-S Ranch Co., a Nevada Corporation, and answering the First Amended Complaint on file herein admits, denies and alleges as follows:

Answering the allegations contained in the First Count of said First Amended Complaint, this Defendant admits, denies and alleges as follows:

I.

Answering Paragraph I of said First Count, this Defendant [55] has no information or belief sufficient to enable it to answer said allegations, and basing its denial upon such lack of information or belief, denies each and every, all and singular, the allegations therein contained; and in this regard, this Defendant denies that said Plaintiffs have any capacity or right to bring or maintain this suit;

II.

Answering the allegations set forth in Paragraph II of said First Count, this Defendant admits that the Defendants A. E. Corbari and Marie Corbari

are husband and wife and are citizens of the State of Nevada; admits that the Defendants Sam Wah-you, Forrest E. Macomber, K. R. Nutting, Thomas G. Lee, Toy Quong, Joe Sin, Yip K. Toon, Herbert Jang and D. W. Zignego are all of them citizens and residents of the State of California; admits that Diamond-S Ranch Co. is and at all times herein mentioned in said First Amended Complaint was a corporation organized and existing under the laws of the State of Nevada, and has its principal office in Reno, Nevada; and, except as expressly herein admitted, denies each and every, all and singular, the allegations therein contained;

III.

This Defendant has no information or belief sufficient to enable it to answer the allegations contained in Paragraph IV of said First Count; and basing its denial upon such lack of information and belief, denies each and every, all and singular, the allegations therein contained;

IV.

This Defendant has no information or belief sufficient to enable it to answer the allegations contained in Paragraph V of said First Count, and basing its denial upon such lack of information and belief, denies each and every, all and singular, the allegations therein contained; [56]

V.

This Defendant has no information or belief suf-

ficient to enable it to answer the allegations contained in Paragraph VI of said First Count, and basing its denial upon such lack of information and belief, denies each and every, all and singular, the allegations therein contained;

Answering the allegations contained in the Second Count set forth in said First Amended Complaint, this Defendant admits, denies and alleges as follows:

I.

This Defendant re-alleges herein, the same as if herein again fully set forth, this Defendant's answers to Paragraphs I, II, IV, V and VI of the First Count set forth in Plaintiff's First Amended Complaint which are incorporated by reference in Paragraph I of the Second Count of said First Amended Complaint;

II.

Answering the allegations contained in Paragraph II of said Second Count, this Defendant alleges that the Diamond-S Ranch Co. is a corporation organized and existing under the laws of the State of Nevada with its principal office at Reno, Nevada, and is a citizen of the State of Nevada; alleges that the said Diamond-S Ranch Co. failed to file with the Secretary of State of Nevada a list of the Officers and Directors and Designation of its Resident Agent in this State for the period commencing July 1, 1951, as required by Section 1, Chapter 180, of the General Corporation Laws of 1925, as amended, (Paragraph 1804 of the Domestic and Foreign Corporation Laws of the State of

Nevada), and that by reason thereof it forfeited its right to carry on business in the State of Nevada, but that on the 11th day of September, 1952, said Corporation cured said default as provided in Section 6 of Chapter 180, of the General Corporation Laws of 1925, as amended (Paragraph 1809 of the Domestic [57] and Foreign Corporation Laws of the State of Nevada), whereupon its Charter was reinstated and said reinstatement expressly authorized said Corporation to transact business in the same manner as if the filing fee or the license tax had been paid when due, and that by reason of said reinstatement, said Corporation was restored to all of its powers, property, etc., the same as if no forfeiture had occurred, and that on said 11th day of September, 1952, the Secretary of State of the State of Nevada issued his Certificate of Reinstatement as provided in Section 6 of Chapter 180, of the General Corporation Laws of 1925, as amended (Paragraph 1809 of the Domestic and Foreign Corporation Laws of the State of Nevada); this Defendant further alleges that on September 7, 1950, said Diamond-S Ranch Co. filed a Certificate of Dissolution in the Office of the Secretary of State of the State of Nevada and that on December 7, 1951, said Corporation, having elected to renew and revive said Corporate Charter, filed in the Office of the Secretary of State of Nevada its Certificate of Renewal and Revival of its Corporate Charter, and said Certificate provided that said renewal or revival of the Corporate Charter of said Corporation was to be effective September 7, 1950,

in accordance with Section 93 (3), Chapter 177, General Corporation Law of 1925, as amended (Chapter 1692 of the Domestic and Foreign Corporation Laws of the State of Nevada), and that by reason of said revival or renewal, said Diamond-S Ranch Co. is, and at all times herein mentioned was, a corporation organized and existing under and by virtue of the laws of the State of Nevada and authorized to transact the business of said Corporation; that except as expressly herein admitted, this Defendant denies each and every, all and singular, the allegations contained in said Paragraph II of said Second Count;

III.

Answering the allegations contained in Paragraph III of said Second Count, this Defendant admits that on September 7, 1950, [58] the Defendants A. E. Corbari, Sam Wahyou, K. R. Nutting and Thomas G. Lee were the duly elected and qualified Directors of said Corporation and alleges that by reason of the reinstatement and revival of said Corporation as hereinabove set forth, said Defendants continued to be the Directors of said Corporation until their successors were elected, and except as expressly herein admitted, denies each and every, all and singular, the allegations contained in said Paragraph III of said Second Count;

IV.

Answering the allegations contained in Paragraph IV of said Second Count, this Defendant denies that the stockholders of said Corporation became

owners of the property therein mentioned or any other property of Diamond-S Ranch Co. or at all;

V.

Admits the allegations contained in Paragraph V of said Second Count except that in regard to the Defendant A. E. Corbari this Defendant alleges that his shares of said stock had long previously been pledged to the Bank of America N. T. & S. A., Hunter Square Branch, Stockton, California, to secure a loan from said Bank, and that on said date said Bank of America N. T. & S. A., Hunter Square Branch, Stockton, California, actually had possession of said shares of stock as pledgeholder and that all of said facts were well known to Plaintiffs herein at that time and were well known to the Plaintiffs herein at the time said Plaintiffs had said purported Assignment executed, which purported assignment is attached to the First Amended Complaint marked Exhibit "B"; that said assignment is of no force and effect whatsoever and at the time the same was executed Plaintiffs well knew that the Defendant A. E. Corbari had pledged his stock to the Bank of America N. T. & S. A., Hunter Square Branch, Stockton, California, and said Plaintiffs were given an opportunity to redeem said stock but refused to do so; [59]

VI.

Answering the allegations contained in Paragraph VI of said Second Count, this Defendant denies the allegations therein contained to the effect

that the Defendants Wahyou and Macomber had notice and knowledge of said agreement prior to their actions complained of therein; this Defendant has no information or belief sufficient to enable it to answer the balance of the allegations contained in said Paragraph VI of said Second Count, and basing its denial upon such lack of information or belief, denies each and every, all and singular, the balance of said allegations;

VII.

Answering the allegations contained in Paragraph VII of said Second Count, this Defendant alleges that said Diamond-S Ranch Co. was revived and reinstated as hereinabove set forth, and further answering said Paragraph VII denies each and every, all and singular, the allegations contained therein;

VIII.

Answering the allegations contained in Paragraph VIII of said Second Count, this Defendant refers to and incorporates herein the same as if herein again fully set forth, its allegations and answers with respect to Paragraph II of the Second Count herein, and except as expressly therein admitted, denies each and every, all and singular, the allegations contained in said Paragraph VIII;

IX.

Denies each and every, all and singular, the allegations contained in Paragraph IX of said Second Count;

Answering the allegations contained in the Third Count set forth in said First Amended Complaint, this Defendant admits, denies and alleges as follows: [60]

I.

This Defendant re-alleges herein, the same as if herein again fully set forth, this Defendant's answers to the allegations contained in the First and Second Counts of said First Amended Complaint which are incorporated by reference in Paragraph I of the Third Count of said First Amended Complaint;

II.

Answering the allegations contained in Paragraph II of said Third Count, this Defendant alleges that on or about the 17th day of October, 1950, the Bank of America N. T. & S. A., Hunter Square Branch, at Stockton, California, assigned all of its right, title and interest in and to said promissory note owing by Corbari, together with the security, consisting of a pledge of 310 Shares of the Capital Stock of Diamond-S Ranch Co. owned by Corbari, unto Sam Wahyou, who paid said Bank the sum of \$5,000.00 plus interest therefor; that the Plaintiffs herein were informed by Corbari that all of his stock in Diamond-S Ranch Co. had been pledged to the Bank of America N. T. & S. A., Hunter Square Branch, Stockton, California, and that he could not transfer or assign said stock unto Plaintiffs, and Plaintiffs had full knowledge of all of said facts prior to March 25, 1950, and on and prior

to October 31, 1950; that the moneys due on said promissory note were not paid to Sam Wahyou when the same became due, and by reason thereof the said Sam Wahyou caused said stock to be sold under the terms of said pledge agreement and pursuant to the laws of the State of California relating to sales under pledges, and on May 21, 1951, became the absolute owner of said 310 shares of stock which formerly belonged to the Defendant Corbari, and said Sam Wahyou is and ever since has been the owner thereof; that Plaintiffs herein at all times knew that Corbari's stock was pledged to the Bank of America for a sum in excess of \$5,000.00 and that they could not obtain a pledge or a lien upon said stock of Corbari without paying off the Bank of [61] America, and on March 25, 1950, said Plaintiffs wrote a letter to Corbari declining to pay off said Bank of America; that this Defendant is and at all times herein mentioned was a bona fide corporation, organized under the laws of the State of Nevada, and the only interest that Corbari had therein was as a stockholder owning 310 shares subject to the pledges as aforesaid; that said Plaintiffs, with full knowledge of the said facts, prepared a so-called Assignment of Corbari's interest in said corporation, knowing that said Assignment was of no force or effect whatever and knowing that there was already a pledge of said stock to said Bank of America; that except as expressly herein admitted, this Defendant denies each and every, all and singular, the allegations contained in Paragraph II of said Third Count;

III.

Denies each and every, all and singular, the allegations contained in Paragraph III of said Third Count;

Answering the allegations contained in the Fourth Count set forth in said First Amended Complaint, this Defendant admits, denies and alleges as follows:

I.

This Defendant re-alleges herein, the same as if herein again fully set forth, this Defendant's answers to the allegations contained in the First, Second and Third Counts of said First Amended Complaint which are incorporated by reference in Paragraph I of the Fourth Count of said First Amended Complaint;

II.

This Defendant has no information or belief sufficient to enable it to answer the allegations contained in Paragraph II of said Fourth Count, and basing its denial upon such lack of information and belief, denies each and every, all and singular, the allegations therein contained; [62]

III.

Denies each and every, all and singular, the allegations contained in Paragraph III of said Fourth Count, and in this connection this Defendant alleges that said Paragraph III does not set forth any facts which show any connection between the Defendant A. E. Corbari and the Defend-

ants Wahyou and Macomber or any facts which give rise to any conspiracy or fraud.

Wherefore, this Defendant prays that Plaintiffs take nothing by virtue of their First Amended Complaint, and that this Defendant have and recover from said Plaintiffs its costs of Court, together with a reasonable attorney fee.

/s/ JOHN DAVIDSON,
Attorney for Defendant Diamond-S Ranch Co., a
Nevada corporation.

Duly Verified. [63]

[Endorsed]: Filed November 3, 1954.

[Title of District Court and Cause.]

ANSWER OF DEFENDANTS, A. E. CORBARI
AND MARIE CORBARI, TO PLAINTIFFS'
FIRST AMENDED COMPLAINT

Come Now the defendants, A. E. Corbari and Marie Corbari, by and through their Attorney, John S. Halley, and for answer and defense to plaintiffs' First Amended Complaint, on file herein, admit, deny and aver as follows:

First Defense

That said First Amended Complaint fails to state a claim against the defendants upon which relief can be granted.

Second Defense

I.

Answering the allegations contained in Paragraph I of the first count of said complaint, the said defendants allege that they are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in said paragraph, and specifically deny that said plaintiffs have any [64] capacity or right to bring or maintain this action.

II.

Answering the allegations contained in Paragraph II of the first count of said complaint, the said defendants admit that they are husband and wife, and are residents and citizens of the State of Nevada, and that Diamond-S Ranch Co. is a corporation organized under the laws of the State of Nevada, with its principal office therein, and is a citizen of the State of Nevada; that except as expressly herein admitted, the defendants deny the remaining allegations contained in said Paragraph for the reason that they are without knowledge or information sufficient to form a belief as to the truth of said remaining allegations.

III.

Answering the allegations contained in Paragraph IV of the first count of said complaint, these defendants admit that on or about the 31st day of December, 1948, they made, executed and delivered to John W. Smeed the promissory note herein referred to, and allege that they are without knowl-

edge or information sufficient to form a belief as to the truth of the remaining allegations contained in said Paragraph.

IV.

Answering the allegations contained in Paragraph V and VI of the first count of said complaint, these defendants deny they owe to plaintiffs the amount of said note, plus interest, less Seven Hundred Fifty Dollars (\$750.00) paid on the principal thereof on or about November 22, 1950, and allege that they have paid thereon the further sum of One Thousand Dollars (\$1,000.00), plus interest, and allege that they have paid the plaintiffs on account of said note the total sum of One Thousand Seven Hundred Fifty Dollars (\$1,750.00), plus interest. [65]

Answering the Allegations Contained in the Second Count of Said Complaint, These Defendants Admit, Deny and Aver as follows:

I.

Answering the allegations contained in Paragraph I of the second count of said complaint, these defendants reallege at this place as if set forth in haec verba their answers to Paragraphs I, II, III, IV, V and VI of the first count of said complaint.

II.

Answering the allegations contained in Paragraph V of the second count of said complaint, these defendants admit the allegations therein contained,

and in this connection allege that the shares of stock owned by the defendant, A. E. Corbari, and registered in his name on the books of said corporation, had, prior to the 22nd day of February, 1950, been pledged by him to the Bank of America N. T. & S. A., Stockton, California, to secure a loan previously made by him from said bank.

III.

Answering the allegations contained in Paragraph VI of the second count of said complaint, these defendants admit that the defendant, A. E. Corbari, executed said assignment, and in this connection alleges that prior to said date and prior to February 22, 1950, the defendant, A. E. Corbari, informed plaintiffs that he had delivered possession of his said shares of stock of said corporation to the Bank of America N. T. & S. A., Stockton, California, as a pledge to secure a loan obtained by him from said bank, and offered to the plaintiffs the opportunity to redeem said stock, which said offer the plaintiffs rejected.

IV.

Answering the allegations contained in Paragraph VII [66] of the second count of the said complaint, these defendants deny each and every allegation therein contained, and in this connection allege that said Diamond-S Ranch Co. was revived and reinstated on the 7th day of December, 1951, in accordance with the corporation laws of the State of Nevada.

V.

Answering the allegations contained in Paragraph VIII of the second count of said complaint, these defendants deny that any of their acts and conduct therein alleged was in violation of any duty, was unlawful, was false, was fraudulent, and in this connection allege that all of the acts of the defendant, A. E. Corbari, in connection with said Certificate of Revival were lawful and proper.

VI.

Answering the allegations contained in Paragraph IX of the second count of said complaint, the defendants deny each and every, all and singular, said allegations.

Answering the Allegations Contained in the Third Count of Said Complaint, These Defendants **Admit, Deny and Aver** as follows:

I.

Answering the allegations contained in Paragraph I of the Third Count of said complaint, these defendants reallege as if set forth at this place in haec verba their answers to all matters contained in the first and second count of said complaint.

II.

Answering the allegations contained in Paragraphs II and III of the third count of said complaint, these defendants allege that they are without knowledge or information sufficient to form a belief

as to the truth of the allegations contained in [67] said Paragraphs.

Answering the Allegations Contained in the Fourth Count of Said Complaint, These Defendants Admit, Deny and Aver as follows:

I.

Answering the allegations contained in Paragraph I of the fourth count of said complaint, these defendants reallege as if set forth at this place in haec verba their answers to all matters contained in the first, second and third counts of said complaint.

II.

Answering the allegations contained in Paragraph II of the fourth count of said complaint, these defendants allege that they are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in said Paragraph.

III.

Answering the allegations contained in Paragraph III, of the fourth count of said complaint, the defendants deny each and every, all and singular, the allegations contained in said Paragraph.

Third Defense

That the alleged second count of said complaint fails to state a claim against defendants upon which relief can be granted.

Fourth Defense

That the alleged third count of said complaint fails to state a claim against defendants upon which relief can be granted.

Fifth Defense

That the alleged fourth count of the said complaint fails to state a claim against defendants upon which relief can be granted. [68]

Wherefore, these defendants pray that plaintiffs take nothing by reason of their complaint, that the same be dismissed, and that they have their costs and expenditures.

/s/ JOHN S. HALLEY,
Attorney for Defendants, A. E. Corbari and Marie
Corbari.

Duly Verified.

Acknowledgment of Service attached. [69]

[Endorsed]: Filed Nov. 12, 1954.

[Title of District Court and Cause.]

ANSWER OF DEFENDANTS FORREST E.
MACOMBER, THOMAS G. LEE, TOY
QUONG, JOE SIN, YIP K. TOON, HER-
BERT JANG and D. W. ZIGNEGO TO
FIRST AMENDED COMPLAINT

Now come the Defendants Forrest E. Macomber,
Thomas G. Lee, Toy Quong, Joe Sin, Yip K. Toon,

Herbert Jang and D. W. Zignego and answering the First Amended Complaint on file herein, admit, deny and allege as follows:

I.

Defendants Forrest E. Macomber and D. W. Zignego disclaim [70] any right, title or interest whatsoever in and to the property of Diamond-S Ranch Co. or to any of the Capital Stock of Diamond-S Ranch Co.

II.

The Defendants, Thomas G. Lee, Toy Quong, Joe Sin, Yip K. Toon and Herbert Jang allege as follows, to-wit: That on August 30, 1953, said Defendants did sell, transfer, assign and set over unto one Frank H. Hogue all of their Shares of Capital Stock in Diamond-S Ranch Co., and that said Defendants, therefore, disclaim any interest in and to the property of Diamond-S Ranch Co. or to any of the Capital Stock of Diamond-S Ranch Co.

III.

All of these answering Defendants adopt by reference all of the allegations and matters contained in the Answer of the Defendant Diamond-S Ranch Co. to the First Amended Complaint on file herein except the answer with respect to Paragraph IX of the Second Count or Cause of Action set forth in said First Amended Complaint and Paragraph III of the Third Count or Cause of Action set forth in said First Amended Complaint, which paragraphs were ordered stricken by this Court.

IV.

These Defendants allege that they are not proper parties to this proceeding for the reason that the above-entitled action is one in personam and not in rem or quasi in rem, and that the Court has no jurisdiction over the persons of these Defendants for the reason that they are not residents of the State of Nevada nor have they been served therein; that they are all residents of the State of California and that they have not voluntarily appeared in this action but have been compelled to appear by Order of Court.

V.

That the First Amended Complaint and each and every cause [71] of action set forth therein, fails to state a claim against these Defendants or any of them upon which relief can be granted;

VI.

That neither said First Amended Complaint nor any Count or Cause of Action set forth therein states any cause of action, in this, that this proceeding is not one to enforce a legal or equitable lien upon or claim to the title to real or personal property or to remove some encumbrance, lien or cloud upon the title to such property, but is one to create for the first time a claim to the property as the effect of the proceeding itself.

Wherefore, these answering Defendants pray that Plaintiffs take nothing against these Defendants and that they be dismissed hence with their costs of

Court herein incurred, together with a reasonable attorney fee.

/s/ JOHN DAVIDSON,
Attorney for Defendants Forrest E. Macomber,
Thomas G. Lee, Toy Quong, Joe Sin, Yip K.
Toon, Herbert Jang and D. W. Zignego.

Duly Verified. [72]

[Endorsed]: Filed January 5, 1955.

[Title of District Court and Cause.]

REQUEST FOR ADMISSION

Defendant Diamond-S Ranch Co., a Nevada Corporation, requests the Plaintiffs above-named to make the following admissions for the purpose of this action only and subject to all pertinent objections to admissibility which may be interposed at the trial:

That each of the following statements is true:

1. That Diamond-S Ranch Co. is a Nevada Corporation, organized and existing under the laws of the State of Nevada since the 17th day of December, 1945. [73]

2. That the Defendant A. E. Corbari, hereinafter called Corbari, was the owner of 310 shares of the Capital Stock of Diamond-S Ranch Co. on and prior to July 10, 1950, out of a total of 1572 $\frac{1}{2}$ Shares outstanding as of that date.

3. That prior to July 10, 1950, Corbari was in-

debted to C-Arrow Cattle Company of Stockton, California, which indebtedness was evidenced by a promissory note dated November 19, 1947.

4. That said promissory note was assigned by C-Arrow Cattle Company unto Bank of America N. T. & S. A., Hunter Square Branch, Stockton, California.

5. That as security for the payment of said note, said Corbari did execute unto said Bank of America N. T. & S. A., Hunter Square Branch, Stockton, California, a pledge of his 310 shares of Capital Stock of Diamond-S Ranch Co.

6. That on or about July 10, 1950, a renewal note in the sum of \$6,000.00 was executed by Corbari, as maker, unto said Bank of America N. T. & S. A., Hunter Square Branch, Stockton, California, which note was likewise secured by a pledge of Corbari's said stock in Diamond-S Ranch Co.

7. That on or about September 18, 1950, Corbari executed another pledge agreement to Bank of America N. T. & S. A., Hunter Square Branch, Stockton, California, for the benefit of said Bank and, likewise, to secure other indebtedness owing by Corbari to one D. W. Zignego and one Forrest E. Macomber.

8. That on or about October 17, 1950, Corbari paid said Bank of America the sum of \$1,000.00, leaving a balance of \$5,000.00 plus interest due to said Bank by Corbari as of October 17, 1950.

9. That on or about said 17th day of October, 1950, the Bank of America, N. T. & S. A., Hunter

Square Branch, at Stockton, California, assigned all of its right, title and interest in and to said promissory note owing by Corbari, together with the security, consisting of a pledge of 310 Shares of the Capital Stock of [74] Diamond-S Ranch Co. owned by Corbari, unto Sam Wahyou, who paid said Bank the sum of \$5,000.00 plus interest therefor.

10. That Plaintiff herein was informed by Corbari that all of his stock in Diamond-S Ranch Co. had been pledged to Bank of America N. T. & S. A., Hunter Square Branch, Stockton, California, and that he could not transfer or assign said stock unto Plaintiff and Plaintiff had full knowledge of all of said facts prior to March 25, 1950, and on and prior to October 31, 1950.

11. That the moneys due on said promissory note were not paid to Sam Wahyou when the same became due, and by reason thereof the said Sam Wahyou caused said stock to be sold under the terms of said pledge agreement and pursuant to the laws of the State of California relating to sales under pledges;

12. That on May 21, 1951, the said Sam Wahyou became the absolute owner of said 310 Shares of stock which formerly belonged to the Defendant Corbari, and said Sam Wahyou is and ever since has been the owner thereof.

13. That Plaintiff herein at all times knew that Corbari's stock was pledged to the Bank of America for a sum in excess of \$5,000.00 and that they could not obtain a pledge or a lien upon said stock of Corbari without paying off the Bank of America.

14. That on March 25, 1950, said Plaintiff wrote a letter to Corbari declining to pay off said Bank of America.

15. That this Defendant is and at all times herein mentioned was a bona fide corporation, organized under the laws of the State of Nevada, and the only interest that Corbari had therein was as a stockholder owning 310 shares subject to the pledges as aforesaid.

16. That with full knowledge of the said facts, said Plaintiff prepared a so-called Assignment of Corbari's interest in said corporation, knowing that said Assignment was of no force or effect whatever and knowing that there was already a pledge of said [75] stock to said Bank of America.

17. Although on September 7, 1950, Diamond-S Ranch Co. filed a Certificate of Election to Dissolve, it elected to rescind the same and filed its Certificate of Revival on December 7, 1951, electing to reinstate said Corporation, and caused said corporation to be renewed and revived as of September 7, 1950, in accordance with Section 93(3), Chapter 177, General Corporation Law of 1925, as amended, of the Statutes of Nevada.

Dated October 4, 1954.

/s/ JOHN DAVIDSON,

Attorney for Defendant Diamond-S Ranch Co., a
Nevada Corporation.

Acknowledgment of Service attached. [76]

[Endorsed]: Filed October 5, 1954.

[Title of District Court and Cause.]

VERIFIED RESPONSE TO REQUEST FOR ADMISSION

Plaintiffs submit the following response to the request of defendant Diamond-S Ranch Co.:

I.

Admit that the Diamond-S Ranch Co. was a Nevada corporation from the 17th day of December, 1948, until the filing of the certificate of dissolution of said corporation on the 7th day of September, 1950. For further answer to this admission see the answer to Request No. 17.

II.

Admit that defendant Corbari was the owner of 310 shares of the capital stock of Diamond-S Ranch Co. out of a total of 1572.5 shares as of September 7, 1950.

III.

Plaintiffs have no knowledge that Corbari was indebted to the C-Arrow Cattle Company of Stockton, California, as evidenced by promissory note dated November 19, 1947.

IV.

These plaintiffs have no knowledge that the promissory note, if any, was assigned by C-Arrow Cattle Company to Bank of [77] America and N. T. & S. A., Hunters Square Branch, Stockton, California.

V.

Admit.

VI.

Plaintiffs admit that on July 10, 1950 defendants Corbari and the C-Arrow Cattle Company executed a demand note in the amount of \$6,000.00, which said note is contained as Exhibit 1 to the deposition of Sam Wahyou and Forrest E. Macomber on file in this court; admit that there was a general pledge executed by Corbari and others to the Bank of America dated the 4th day of January, 1949 and further admit that there was another pledge agreement dated September 18, 1950, but deny any knowledge of any pledge agreement other than the said two documents, copies of which were both furnished to plaintiffs by defendant Macomber.

VII.

Admit the execution of a pledge agreement of September 18, 1950 by defendant Corbari.

VIII.

Admit.

IX.

Admit that on the 17th day of October, 1950 the Bank of America by document attached to the deposition of Wahyou and Macomber, as Exhibit 2, assigned its interest in the note, Exhibit 1, to the deposition of Wahyou and Macomber, to Wahyou.

X.

Plaintiffs admit that Corbari informed plaintiffs'

decedent that all of his stock in the Diamond-S Ranch Company had been pledged to the Bank of America.

XI.

With reference to Admission XI plaintiffs deny that the facts are other than as set forth in Paragraph II of the Third Count of plaintiffs' amended complaint. [78]

XII.

Deny.

XIII.

Plaintiffs make reference to the admission concerning the pledge of the stock contained in the answer to Admission X above.

XIV.

Admit.

XV.

Deny.

XVI.

Plaintiffs deny that the facts are other than as set forth in their amended complaint concerning the assignment which is attached thereto as an exhibit.

XVII.

Plaintiffs deny that the law is as concluded by defendant Diamond-S Ranch Co. and specifically deny that there is in the Nevada law any right in the defendants to "elect to rescind" dissolution

action theretofore ordered under the seal of the Secretary of State of the State of Nevada.

SMITH & EWING,
CARVER, McCLENAHAN &
GREENFIELD,
PIKE & McLAUGHLIN,

/s/ By MILES N. PIKE,
Attorneys for Plaintiffs [79]

Duly Verified. [80]

[Endorsed]: Filed October 12, 1954.

[Title of District Court and Cause.]

MOTION TO QUASH SERVICE OF SUM-
MONS; MOTION TO DISMISS; AND MO-
TION TO STRIKE

Now come the Defendants Sam Wahyou, Forrest E. Macomber, K. R. Nutting, Thomas G. Lee, Toy Quong, Joe Sin, Yip K. Toon, Herbert Jang and D. W. Zignego, and appearing specially for that purpose, move the Court as follows: [81]

1. To quash the service of Summons made outside of the State of Nevada upon all of said Defendants, upon the ground that the above-entitled action is one in personam and not in rem or quasi in rem and that the Court has no jurisdiction over the persons of these Defendant; and

2. To dismiss the action because the Complaint fails to state a claim against these Defendant, and

each of them, upon which relief can be granted; and

3. To strike from said Complaint the following:

All of Paragraph IX of the Second Count;

All of Paragraphs II and III of the Third Count;

All of Paragraph III of the Fourth Count;

upon the ground that said allegations are conclusions of law, and are redundant and immaterial.

Dated: November 23, 1954.

/s/ JOHN DAVIDSON,

Attorney for Said Defendants

Acknowledgment of Service attached. [82]

[Endorsed]: Filed November 24, 1954.

[Title of District Court and Cause.]

ORDER DENYING MOTION TO QUASH
SERVICE; DENYING MOTION TO DIS-
MISS; AND GRANTING IN PART AND
DENYING IN PART MOTION TO STRIKE

The defendants' (1) Motion to Quash Service, (2) Motion to Dismiss, and (3) Motion to Strike came on this 15th day of December, 1954, for hearing, Miles N. Pike and Laurence N. Smith appearing for the plaintiffs, and John Davidson appearing for the defendants.

The motions being argued by counsel and presented submitted to the Court for determination, it is

Ordered that the motion to quash service of

summons [86] be and the same is hereby denied. It is further

Ordered, that the motion to dismiss be and the same is hereby denied. It is further

Ordered, that the motion to strike is granted as to Paragraph IX of the Second Count, and as to Paragraph III of the Third Count; said motion is denied as to Paragraph II of the Third Count and Paragraph III of the Fourth Count.

Dated: December 15th, 1954.

/s/ JOHN R. ROSS,

United States District Judge [87]

[Endorsed]: Filed December 15, 1954.

[Title of District Court and Cause.]

FACTUAL STATEMENT OF THE DEFENSE OF DEFENDANT DIAMOND-S RANCH CO.

The facts in this case, so far as material here and to the knowledge and belief of the Defendant Diamond-S Ranch Co., are as follows:

Diamond-S Ranch Co. is a Nevada Corporation, organized and existing under the laws of the State of Nevada since the 17th day of December, 1945.

The Defendant A. E. Corbari, hereinafter called Corbari, was the owner of 310 shares of the Capital Stock of Diamond-S Ranch Co. on and prior to July 10, 1950, out of a total of 1572½ Shares outstanding as of that date. [88]

Prior to July 10, 1950, Corbari was indebted to C-Arrow Cattle Company of Stockton, California, which indebtedness was evidenced by a promissory note dated November 19, 1947, and that said promissory note was assigned by C-Arrow Cattle Company unto Bank of America N. T. & S. A., Hunter Square Branch, Stockton, California, and that as security for the payment of said note, said Corbari did execute unto said Bank of America N. T. & S. A., Hunter Square Branch, Stockton, California, a pledge of his 310 shares of Capital Stock of Diamond-S Ranch Co.

On or about July 10, 1950, a renewal note in the sum of \$6,000.00 was executed by Corbari, as maker, unto said Bank of America N. T. & S. A., Hunter Square Branch, Stockton, California, which note was likewise secured by a pledge of Corbari's said stock in Diamond-S Ranch Co., and that on or about September 18, 1950, Corbari executed another pledge agreement to Bank of America N. T. & S. A., Hunter Square Branch, Stockton, California, for the benefit of said Bank and, likewise, to secure other indebtedness owing by Corbari to one D. W. Zignego and one Forrest E. Macomber. On or about October 17, 1950, Corbari paid said Bank of America the sum of \$1,000.00, leaving a balance of \$5,000.00 plus interest due to said Bank by Corbari as of October 17, 1950.

On or about said 17th day of October, 1950, the Bank of America N. T. & S. A., Hunter Square Branch, at Stockton, California, assigned all of its

right, title and interest in and to said promissory note owing by Corbari, together with the security, consisting of a pledge of 310 Shares of the Capital Stock of Diamond-S Ranch Co. owned by Corbari, unto Sam Wahyou, who paid said Bank the sum of \$5,000.00 plus interest therefor.

Plaintiff herein was informed by Corbari that all of his stock in Diamond-S Ranch Co. had been pledged to Bank of America N. T. & S. A., Hunter Square Branch, Stockton, California, and that he could not transfer or assign said stock unto Plaintiff and Plaintiff had full knowledge of all of said facts prior to [89] March 25, 1950, and on and prior to October 31, 1950.

The moneys due on said promissory note were not paid to Sam Wahyou when the same became due, and by reason thereof the said Sam Wahyou caused said stock to be sold under the terms of said pledge agreement and pursuant to the laws of the State of California relating to sales under pledged, and on May 21, 1951, became the absolute owner of said 310 shares of stock which formerly belonged to the Defendant Corbari, and said Sam Wahyou is and ever since has been the owner thereof.

Plaintiff herein at all times knew that Corbari's stock was pledged to the Bank of America for a sum in excess of \$5,000.00 and that they could not obtain a pledge or a lien upon said stock of Corbari without paying off the Bank of America, and on March 25, 1950, said Plaintiff wrote a letter to Corbari declining to pay off said Bank of America.

This Defendant is and at all times herein mentioned was a bona fide corporation, organized under the laws of the State of Nevada, and the only interest that Corbari had therein was as a stockholder owning 310 shares subject to the pledges as aforesaid. With full knowledge of the said facts, said Plaintiff prepared a so-called Assignment of Corbari's interest in said corporation, knowing that said Assignment was of no force or effect whatever and knowing that there was already a pledge of said stock to said Bank of America.

Although on September 7, 1950, Diamond-S Ranch Co. filed a Certificate of Election to Dissolve, it elected to rescind the same and filed its Certificate of Revival on December 7, 1951, electing to reinstate said corporation, and caused said corporation to be renewed and revived as of September 7, 1950, in accordance with Section 93(3), Chapter 177, General Corporation Law of 1925, as amended, of the Statutes of Nevada.

Plaintiff's case then boils down to this: Plaintiff [90] undoubtedly has a good cause of action against the Defendants Corbari on a promissory note. Plaintiffs had an opportunity to obtain some security for that promissory note, were unwilling to pay the Bank of America off in order to do so, prepared a document that has no legal effect and were content to rely upon such a document, in the meantime the assignee of the Bank of America foreclosed its lien on the stock and obtained Corbari's stock, so that Corbari has no more stock, and neither Dia-

mond-S Ranch Co. nor any other Defendants herein are indebted to or liable to Plaintiffs in any way or under any theory.

Respectfully submitted,

/s/ JOHN DAVIDSON,

Attorney for Defendant Diamond-S Ranch Co., a Nevada Corporation.

Acknowledgment of Service attached. [91]

[Endorsed]: Filed October 5, 1954.

[Title of District Court and Cause.]

DEPOSITION OF W. W. LORD

Be it remembered that, pursuant to stipulation of counsel in the above-entitled matter, the deposition of W. W. Lord, a plaintiff herein, and a witness produced for and on behalf of the defendants, was taken before me, Leota Raiford, a Notary Public in and for the County of Washoe, State of Nevada, duly commissioned, qualified and acting, beginning at the hour of 12:35 o'clock p.m. on Friday, the 17th day of October, 1952, at the law offices of John S. Halley, Esquire, First National Bank Building, in the City of Reno, County of Washoe, State of Nevada.

Laurence N. Smith, Esquire, representing Messrs. Smith & Ewing, and George Greenfield, Esquire, representing Messrs. Carver, McClenahan & Greenfield, appearing as counsel on behalf of the plaintiffs; and

John S. Halley, Esquire, appeared as counsel on behalf of defendant, A. E. Corbari; and

John Davidson, Esquire, appeared as counsel on behalf of defendant, Diamond-S Ranch Company, a corporation.

The said witness was by me first duly sworn to testify to the truth, the whole truth, and nothing but the truth in the testimony he was about to give in the above-entitled matter, whereupon said witness was examined upon oral interrogatories propounded by counsel, and made answers thereto, under oath, as hereinafter contained, and the following proceedings were had: W. W. Lord, a plaintiff herein, of lawful age, produced as a witness by the defendants herein, being first duly sworn to state the truth, the whole truth, and nothing but the truth, testified on his oath as follows:

Examination

By Mr. Davidson:

Q. State your name, please.

A. W. W. Lord.

Q. You are one of the trustees of the Smeed Estate? A. Yes.

Q. One of the plaintiffs in the action Miller vs. Corbari et al? A. Yes.

Q. You have prepared an assignment dated the 31st day of October, 1950, signed by Mr. and Mrs. Corbari, is that true? A. No.

Q. You did not prepare it?

A. I did not prepare it.

Q. You had it prepared?

A. Yes, I had it prepared.

Q. Who prepared it?

A. Attorney Laurence Smith.

Q. You had Mr. Smith who is attorney for the estate prepare it? A. Yes.

Q. You had him prepare it at your request and suggestion?

A. Well, it was Archie's request.

Q. But, you instructed Mr. Smith to prepare it?

A. Mr. Corbari was in Caldwell and met with Mr. Smith and myself and discussed the assignment.

Q. At the time this assignment was drawn, you knew of your own personal knowledge that the Bank of America in Stockton had a lien on the Corbari stock? A. No.

Q. You did not? A. No.

Q. You had no knowledge of it at all?

A. He represented to us that day that he had paid it.

Q. The day he signed the assignment, he represented to you that he had paid it?

A. The day we met and instructed to prepare the assignment.

Q. Prior to that, you knew the bank had it?

A. Yes.

Q. But, when the assignment was drawn, you didn't know that the bank had a prior claim on this stock?

A. When the assignment was prepared, my understanding was that the bank debt had been paid by Mr. Corbari.

Q. How did you reach that understanding?

A. Well, he said that he had paid it.

Q. Mr. Corbari told you that he had paid it?

A. Yes, when he instructed us to prepare the assignment, we asked him what he had done about the stock of the corporation which had been dissolved, and he said he had paid the bank.

Q. Corbari told you that he had paid the bank?

A. Yes, sir.

Q. Then at that time or at any time later, you didn't know that the bank had a lien on this stock?

A. Not after that time, no, sir.

Q. Then after October 31, you had no knowledge whatever that the bank still had a lien on this stock?

A. No, sir.

Mr. Davidson: That is all.

Mr. Greenfield: No questions.

Mr. Halley: Wait a minute. I'd like to ask a question here.

Q. Where did you learn that the corporation had been dissolved or from whom did you learn the corporation had been dissolved?

A. Mr. Corbari.

Q. When did you learn it from him?

A. Well, about I think some time in September of 1950.

Q. Shortly before this assignment was prepared?

A. Yes, Mr. Corbari discussed with me at one time about the anticipated sale they wanted to make of the ranch.

Q. Did he at that time, represent that the bank had been paid for the stock?

A. Not until we had the meeting in Caldwell.

Q. What was the date of that meeting? Was it the date this assignment was signed?

A. Not when it was signed, probably when it was dated. Mr. Corbari signed the assignment in Stockton.

Q. The assignment is dated the 31st day of October, and it is acknowledged on the same date, 1950, in Stockton.

A. It was a short time before that that Mr. Corbari was in Caldwell. I don't remember exactly the date.

Q. Prior to that time, you knew his stock in this company had been pledged to the Stockton Branch of the Bank of America?

A. The year before, I knew it had been pledged there.

Q. He told you at that particular time the bank had been paid off, the stock redeemed?

A. Yes.

Q. Did you demand of him at that time that he deposit with you the stock? A. No.

Q. This assignment, as I understand, Mr. Lord, was given to secure a debt owing your Trust?

A. That is right.

Q. It wasn't for money advanced at that particular time, but it was to secure what we call an antecedent debt, is that right?

A. A note, yes.

Q. Given to secure the note of December 31, 1948? A. Yes.

Q. Was that note given for a debt that was on the books of your company?

A. That note was given as a renewal of another note that was given for the debt.

Q. Your firm had a running open account with Corbari, I take it?

A. No, we had a note from Mr. Corbari.

Q. What was the note for, given for money or merchandise?

A. It was given, the notes were given for payment of checks and drafts that were no good.

Q. And the drafts were given for cattle?

A. The drafts were given for cattle.

Mr. Davidson: In other words, the note was actually for the purchase of cattle?

The Witness: No.

By Mr. Halley:

Q. I'd like to go on record again.

Q. You state Mr. Lord, that the note of December 31, 1948, was given as a renewal note?

A. Yes.

Q. For the same amount? Was the old note in the same amount, \$15,041.34?

A. No, the old note was \$16,041.00 and he paid a thousand dollars and interest to that date.

Q. On December 31, 1948, he paid your firm a thousand dollars plus interest, is that right?

A. That is right, and gave us this renewal note.

Q. And how much has been paid on this December 31st, 1948, note?

A. Seven Hundred Fifty Dollars.

Q. When was that paid?

A. That was paid—the date I can't remember. It was when I was in Tracy, 1950, early 1950.

Q. Was it paid before or after this assignment?

A. Before—no, it was paid after the assignment.

Q. So it was paid sometime after October, 1950?

A. Yes, I believe it was.

Q. That was down at Tracy? A. Yes.

Q. Was any discussion had at that time as to the shares of stock we have been talking about?

A. No.

Q. Did you ever ask Mr. Corbari to deliver to you the stock of this corporation?

A. Not after the assignment.

Q. You made no demand on him whatsoever?

A. Not after the assignment.

Mr. Halley: I think that is all.

Notary Public's Certificate attached.

[Title of District Court and Cause.]

DEPOSITION OF ARCHIE EUGENE CORBARI

Be it remembered that, pursuant to stipulation hereunto annexed in the above-entitled matter, the deposition of Archie Eugene Corbari, a defendant herein and a witness produced for and on behalf of the plaintiffs, was taken before me, Leota Raiford, a Notary Public in and for the County of Washoe, State of Nevada, duly commissioned, qualified, and acting, beginning at the hour of 11:30 o'clock a.m. on Friday the 17th day of October A.D. 1952, at the law offices of John S. Halley, Esquire, First National Bank Building, in the City of Reno, County of Washoe, State of Nevada; the plaintiffs being

represented by George Greenfield, Esquire, and Laurence N. Smith, Esquire; appearing as counsel for the defendant, A. E. Corbari, was John S. Halley, Esquire and for the defendant, Diamond-S Ranch Company, a corporation, John Davidson, Esquire; that the said witness was by me first duly sworn to testify to the truth, the whole truth, and nothing but the truth in the testimony he was about to give in the above-entitled matter, whereupon said witness was examined upon oral interrogatories propounded by counsel, and made answers thereto, under oath, as hereinafter contained, and the following proceedings were had:

Mr. Halley: The defendant A. E. Corbari's deposition is being taken pursuant to stipulation between counsel for the plaintiffs and the attorney for the defendant, Corbari, dated the 14th of October, 1952; said deposition to be taken by the plaintiffs. The plaintiffs are appearing at this deposition by Laurence N. Smith of Smith & Ewing of Caldwell, Idaho and George Greenfield of Carver, McClenahan & Greenfield of Boise, Idaho. Archie Eugene Corbari, a defendant herein, of lawful age, produced as a witness by the plaintiffs herein, being first duly sworn to state the truth, the whole truth, and nothing but the truth, testified on his oath as follows:

Direct Examination

By Mr. Greenfield:

Q. Will you state your full name Mr. Corbari?

A. Archie Eugene Corbari.

Q. Where do you live now?

A. Right now at Golconda, Nevada.

Q. And what is your present business, how are you employed? A. Ranch manager.

Q. Is that the Diamond-S Ranch Company?

A. Yes.

Q. You are in charge of their ranching operations? A. That is right.

Q. When did you first become interested in the Diamond-S Ranch Company?

A. 1945, I guess.

Q. What was the nature of your interest at that time? A. At that time I was a stockholder.

Q. Do you recall to what extent you were a stockholder when you first became interested?

A. At that time I had about three hundred and ten shares, I believe.

Q. That was your original — represented your original investment? A. That is right.

Q. And when did you become an officer in the corporation? A. I guess in '46.

Q. What position did you have on the Board of Directors at that time?

A. I don't remember.

Q. You were a member of the Board of Directors? A. I was a member of the Board, yes.

Q. From 1945 when you first became interested in the corporation, until the present date, who has been the managing agent or managing officer of the corporation?

A. Let me see now. Explain that again.

Q. Well who has handled the principal business transactions of the corporation?

A. The President.

Q. Who is that? A. Sam Wahyou.

Q. Who has custody of the corporate books?

A. I suppose he has now.

Q. And has he had as long as you have been connected with the corporation?

A. Oh, yes.

Q. He has always had custody of the books?

A. Yes.

Q. When you became associated with the corporation in 1946, was Wahyou in the corporation at that time? A. Yes, sir.

Q. And he has been with it ever since?

A. Yes, sir.

Q. Do you know whether or not the corporation in 1945 and since, has employed a regular attorney?

A. I believe it has.

Q. Who is that?

A. At the time I was in there it was MacComber.

Q. That is Forrest MacComber of Stockton, California? A. Yes, sir.

Q. So Forrest MacComber has at all times since you became associated with the organization, and up to the present time, is the regular counsel for the corporation? A. I believe so.

Q. Do you know if he is still attorney for the corporation? A. I wouldn't know as of today.

Q. Was he the attorney for the corporation at any time this year?

A. I don't know anything of the books this year at all.

Q. How about last year?

A. Neither last year.

Q. When is your last knowledge of MacComber being attorney for the corporation?

A. About '49.

Q. Now directing your attention to December 31, 1948, did you on that date execute a Promissory Note in favor of John W. Smeed or order in the amount of \$15,041.34? A. Yes, sir.

Q. And will you state whether or not you have paid anything on that note since the date of execution? A. I believe I did.

Q. How much?

A. One time a thousand dollars, another time seven hundred and fifty.

Q. Let me ask you then, are you sure the thousand dollars you referred to was paid after you executed the note, or was it paid on a debt you owed before you executed the note?

A. I don't remember.

Q. It could have been the other way?

A. It could have been and could have not. I know I paid a thousand dollars once and seven hundred and fifty dollars.

Q. It may have been you executed the note after you paid the thousand dollars?

A. I don't remember.

Q. What was the amount of your original indebtedness to Smeed?

A. I think it was around fourteen thousand. I don't remember the figure exactly.

Q. In any event, on December 31, 1948, you executed your note in his favor for \$15,041.34?

A. I don't remember the figure, but I do know the note.

Mr. Halley: Do you have that note with you?

Mr. Greenfield: I have a copy attached to the pleadings. We don't have the original, no.

Mr. Greenfield: Referring then, Mr. Corbari, to October 31, 1950, on that date did you execute an assignment of your interest in the Diamond-S Ranch Company to John W. Smeed.

Mr. Halley: Just a minute. May I ask if you have that assignment?

Mr. Smith: Yes, we have that. No, the original is not here.

Mr. Greenfield: Strike that last question. I want to rephrase it. Let me ask you if, on October 31, 1951, you executed an assignment of all your interest in the Diamond-S Ranch Company to W. W. Lord as trustee of the John W. Smeed estate?

Mr. Halley: Just a minute before you answer that, Archie. I object to the form of your question Mr. Greenfield on the ground that the copy of the assignment attached to your complaint as Exhibit B, purporting to be a true copy as I read it, is an assignment of his interest in a partnership rather than the Diamond-S Ranch Company.

By Mr. Greenfield:

Q. I will rephrase the question. Did you on October 31, 1950, assign to W. W. Lord, trustee of the John W. Smeed estate, all of your right, title and interest in and to the assets of a partnership that was formed by reason of the dissolution of the Diamond-S Ranch Company at a prior date?

A. I don't know there was any partnership there. I thought it was a corporation.

Q. You are acquainted with the Diamond-S Ranch Company?

A. Up until about '49 I am. It was a corporation only.

Q. When you made an assignment to W. W. Lord on October 31, 1950, of all of your right, title and interest in and to the assets of the Diamond-S Ranch Company, what were you intending to convey to Mr. Lord?

Mr. Halley: Just a second. I think the witness is entitled to see the assignment and in the absence of you having the original here, I would assume both you and Mr. Smith represent this is a full, true and correct copy of that assignment and in lieu of examining the original he should have the opportunity to examine the copy.

Mr. Greenfield: I will be perfectly willing.

(Witness examines document.)

Mr. Greenfield: Let me reform the question. Mr. Corbari you have examined the document designated as Exhibit B attached to the complaint in this action, and I ask you whether or not on October 31, 1950, you and your wife, Marie Corbari, executed that document?

Mr. Halley: On the basis of the representation of counsel for the plaintiffs that this is a full, true and *correct* of the original assignment executed on the 31st day of October, 1950, we can stipulate for the purpose of the record that it was signed by A. E. Corbari and his wife, Marie Corbari, on that

date and acknowledged before a Notary Public in and for the State of California, County of San Joaquin.

Mr. Greenfield: That is fine.

Q. Now Mr. Corbari, a few days prior to your execution of this assignment do you recall being in Caldwell, Idaho, and discussing the assignment with Mr. Smith, attorney for the Smeed estate and W. W. Lord? A. Yes.

Q. Do you recall that Mr. Lord told you that he either expected you to pay what you owed or secure it? A. That is right.

Q. At that time you agreed to secure it by assigning your interest in the Ranch Company?

A. The corporation.

Q. Do you also recall at that time informing Mr. Lord and Mr. Smith that your interest in the ranch company was free and clear? A. No.

Q. You deny saying that?

A. I told them there was a pledge on it, the bank in Stockton at all times. They knew it.

Q. You didn't tell them you had paid the bank off?

A. No, I told them the bank was crowding me, that is why I wanted them to take the stock at the time and they wouldn't do it.

Q. When you executed this assignment of your interest in the ranch, it was your intention, was it not to convey to the Smeed estate all of your right, title and interest to the ranch, subject then, as you say, to the lien at the bank? A. Sure.

Q. Now when did you first become indebted to

the Bank of America? A. 1948.

Q. And what was the original amount of the indebtedness? A. Around \$15,000.00.

Q. How did you secure that debt?

A. I didn't secure it at that time, just my signature.

Q. You borrowed the money on a note?

A. Yes.

Q. Then did there come a time when you did leave security with the Bank of America?

A. Yes, my shares.

Q. When was that?

A. About the end of '48.

Q. And how many shares did you leave at the Bank of America at that time?

A. Three hundred and ten.

Q. Did that represent all of the shares you had in the Diamond-S Ranch Company?

A. Yes.

Q. Did that constitute a pledge of those shares, or do you know? A. Yes.

Q. At the time you pledged your shares with the Bank of America, Mr. Corbari, how much did you owe the bank at that time?

Mr. Halley: If you know, Archie.

The Witness: I don't remember how much it was, pretty near all of it.

By Mr. Greenfield:

Q. Had you made any payments on the original fifteen thousand dollar indebtedness at the time you pledged your stock?

A. Very small payments.

Q. After pledging your stock did you make any payment to the Bank of America?

A. One small payment.

Q. Do you recall the amount of it?

A. No, I can't.

Q. Do you recall when you made it?

A. In '49, I think.

Q. Now, directing your attention to September 7, 1950, I ask you if on that date the Diamond-S Ranch Company filed voluntary dissolution papers with the Secretary of State of the State of Nevada? A. I don't know.

Q. On September 7, 1950, Mr. Corbari, you were a director and officer of the Diamond-S Ranch Company, were you not? A. In what year?

Q. 1950. A. Yes, I was a director.

Mr. Greenfield: I'd like this marked Exhibit 1.

(Thereupon the Notary Public marked a photostatic copy of a document "Plaintiffs' Exhibit 1".)

Mr. Greenfield: Mr. Corbari, I show you what purports to be a photostatic copy of the document entitled "Written Consent of the Shareholders of the Diamond-S Ranch Company to Voluntary Dissolution", and on page 2 thereof I ask you if your signature appears on the right hand column?

Mr. Halley: For the purpose of the record, we will stipulate that Mr. Corbari's signature appears on plaintiffs' Exhibit 1, purportedly signed on September 1, 1950, for three hundred and ten shares.

Mr. Greenfield: Would you do this also: Would you stipulate that Mr. Corbari on that date gave

his written consent to the voluntary dissolution of the corporation?

Mr. Halley: The document purports to state that he gave his consent.

Mr. Greenfield: Archie ought to know if he gave his consent or not.

Mr. Halley: The instrument speaks for itself.

(Off record discussion between counsel.)

Mr. Halley: We will stipulate he executed this instrument marked "Plaintiff's Exhibit No. 1".

By Mr. Greenfield:

Q. Mr. Corbari, on September 1, 1950, when you signed the instrument, a copy of which is plaintiffs' Exhibit No. 1, and gave your consent to the voluntary dissolution of the Diamond-S Ranch Company, a corporation, you were an officer and a director of the corporation at that time, were you not? A. Yes, according to that, yes.

Q. Now, Mr. Corbari at the time you consented in writing to the dissolution of the corporation, your shares of stock were still pledged with the Bank of America? A. Oh, yes.

Q. And according to your previous statement, those shares of stock remained pledged with the Bank of America on October 31, 1950, when you made your assignment to the Smeed estate?

A. I know they were always in the bank.

Q. They were there when you made the assignment? A. Certainly they were there.

Q. When did you redeem your stock from the Bank of America?

A. I never did redeem it.

Q. Do you know what happened to it?

A. Sure, I owed some money on it and they were going to sell out.

Q. You believe the bank sold the stock?

A. The stock was always at the bank.

Q. And you believe the bank sold it?

A. No, the bank wanted their money on the stock, and I told the Smeed Company about it, wrote them all about it. I owed Sam Wahyou money. I told them the bank was going to sell that stock, now "What are we going to do?"

Q. When did the bank sell the stock, do you know? A. No.

Q. Do you recall whether or not you received any papers from an attorney or from the bank relative to the sale of the stock? A. Yes.

Q. What papers were those?

A. Letters.

Q. What did they say?

A. If I didn't come in and take up the obligation, the only chance they had to redeem their money was to sell the shares, regardless of what cost they brought.

Q. Do you have the correspondence?

A. Oh, yes.

Q. Where do you have it?

A. In my files, or (to Mr. Halley) have you got it?

Mr. Greenfield: Will you furnish us copies of all correspondence between Mr. Corbari and the bank on this subject?

Mr. Halley: I will furnish all I have. I don't

know whether it is all or not. The only thing I have in the office file here from the bank is this one letter.

Mr. Greenfield: Apart from the letter of November 2, 1949, signed by Ernest F. Segale, Assistant Manager of the Bank of America at Stockton with reference to your debt, did you receive any other letters or notices from the bank relative to your stock?

The Witness: I think I have.

Mr. Halley: Here is another one.

By Mr. Greenfield:

Q. In any event, the Bank of America had not sold your stock at the time you made your assignment to Smeed? A. I don't remember.

Q. Do you remember whether or not the Bank of America had sold your stock at the time the corporation was voluntarily dissolved in September of 1950? A. I don't remember.

Q. You don't know at all? A. No.

Q. At the time you made your assignment to Smeed, did you know whether or not the stock had been sold or not?

A. That I don't remember either.

Q. Then do I understand you made the assignment to Smeed without knowing if you had anything to assign or not?

A. No, I told Smeed we had to pick that stock up.

Q. Did you know the stock had not been sold when you made the assignment?

A. I don't think it was sold.

Q. You don't think it was sold at the time you made the assignment? A. No.

Q. That is what I want to know. Do you recall in March of this year an occasion when Mr. Smith, Bill Johnson and myself visited you at the Diamond-S Ranch Company? A. Yes.

Q. Do you remember telling us at that time you redeemed this stock from the bank and paid the bank with your own money?

A. I said I didn't remember whether I did that or not.

Q. So you say now you told us you didn't know whether you redeemed it yourself or not?

A. That money was owing and I wanted to pick it up. I owed Wahyou. He wanted his money; someone had to pick the stock up.

Q. Do you deny you told Mr. Smith, Mr. Johnson and myself that you went to the bank and paid the bank with your own money and got the certificates of stock from the bank? A. No.

Q. You deny that? A. Yes.

Q. Do you recall our asking you whether or not Mr. Wahyou had paid the bank and you replied that he had not paid the bank, that you had paid the bank with your own money.

A. No, I don't.

Q. You didn't say that? A. No.

Q. Have you ever seen your certificates of stock since you left them with the bank? A. No.

Q. So you deposited your certificates of stock with the bank, I think you said in '48 and you have never set eyes on them since? A. No.

Q. That is the truth? A. That is right.

Q. Now you say that at the same time you were negotiating with the Smeed Company with reference to the money you owed them, that Wahyou was also crowding you? A. Oh, yes.

Q. When did you first become indebted to Wahyou? A. 1947.

Q. And how much did you owe him at that time? A. Around \$14,000.00.

Q. How did you become indebted to Wahyou in that amount?

A. Well, I bought cattle off of him, stock.

Q. Did you buy stock from Wahyou or the Diamond-S Ranch Company? A. Wahyou.

Q. His personal cattle? A. Yes.

Q. So you and Wahyou were engaged in cattle operations apart from the Diamond-S Ranch Company? A. I just purchased from him.

Q. And the cattle that you purchased from Wahyou from which this obligation to him arose, you bought for yourself or the ranch company.

A. For myself.

Q. The ranch company was not involved in that at all? A. Not at all.

Q. Then did you later become further indebted to Wahyou? A. No.

Q. So that the full amount of your obligation to Wahyou from 1946 on was about \$14,000.00?

A. About that.

Q. Now did you owe Wahyou this \$14,000.00 at the time you made the assignment to the Smeed estate? A. Oh, yes.

Q. Did you tell Mr. Lord or Mr. Smith about your indebtedness to Wahyou? A. No.

Q. Now after having made the assignment to Smeed, did you have occasion to discuss your debt with Wahyou? A. Say that again.

Q. Strike that. I will state it again. After you made your assignment to the Smeed estate of your interest in the ranch, after that, did you discuss your indebtedness to Wahyou with Wahyou?

A. No.

Q. Did he ever come to you and talk to you about your debt? A. Yes.

Q. After you made your assignment to Smeed?

A. I could correct that question different. I told the Smeed Company we had to take the stock up at the bank. I had an attorney write them a letter.

Q. I understand that. My question is: After you made your assignment to Smeed, did you talk to Wahyou about your debt to him? A. No.

Q. Or did he talk to you about it?

A. He talked to me about it.

Q. This was a one-sided conversation. He talked to you; you didn't talk to him. What did he say?

A. He asked me about the money and I said as soon as I got this straightened out and got the money out I could straighten up with him at the same time as I wanted to straighten up with these people until that company went bankrupt. They held it for two or three years in the bankruptcy court.

Q. You explained to Wahyou that you were pretty well strapped, you owed money to Smeed

and you owed money to him and you were going to try and clean them both up?

A. That is right.

Q. This was after you made your assignment to Smeed?

A. I think it was before if I remember correctly.

Q. My original question was whether or not you talked to Wahyou or he talked to you about your debt after you made the Smeed assignment and you say he did talk to you, is that right or wrong?

A. He talked to me before because I wrote to them and told them about these shares in the bank and I wanted them to take them out of the bank and hold them, and they wrote back and said they couldn't do it.

Q. Did Wahyou ever talk to you about your debt after you assigned the thing to Smeed?

A. Before and after, both.

Q. On all of the occasions when you talked to Wahyou about your debt to him, you explained to him you were hard-pressed for money, you owed Smeed and you owed him, and you were going to take care of both of them when you could, is that right?

A. Yes.

Q. Did you also tell Wahyou you had made this assignment to Smeed?

A. I think I did.

Q. You think you did?

A. Yes.

Q. When you had these conversations with Wahyou, where would they take place? Would he come out to the ranch?

A. He'd come out to the ranch and I talked to him. At that time I was in my own place.

Q. So you feel quite certain that Wahyou knew that you had made this assignment to Smeed subject to what you owed the bank?

Mr. Halley: If you know.

The Witness: I don't remember, yes or no, but I believe I did talk to him.

By Mr. Greenfield:

Q. You believe you did tell him that?

A. Yes.

Q. Now this \$14,000.00 you owed Wahyou, had you ever given him any security for it?

A. No, it was an open bill.

Q. That was just an open bill? A. Yes.

Q. Was it represented by a promissory note?

A. No, it wasn't.

Q. It was just an oral contract, an oral obligation? A. That is right, a bill.

Q. It was never at any time secured by your stock or your interest in the ranch or in any other way? A. No.

Q. Do you have, or has there ever been any written evidence of the Wahyou debt?

A. Bills.

Q. You mean bills from Wahyou to you?

A. Yes.

Q. Nevertheless, you stated you owed him \$14,000.00 and he wanted his money?

A. He carried it on his books as a bill.

Q. What books? A. I don't know.

Q. Have you ever seen his books?

A. No.

Q. Have you ever seen any written evidence of the debt?

A. All I got is the bills for the cattle I purchased.

Q. Where would the bills come from?

A. From him.

Q. Have you talked with Wahyou since this suit was filed against you? A. No.

Q. You have never seen him to talk to him?

A. No.

Q. Are you familiar with the fact that Wahyou obtained your shares of stock in the Diamond-S Ranch? A. Sure.

Q. Do you know when he obtained them?

A. I couldn't tell you the date, no.

Q. Do you know what year it was?

A. '50.

Q. How did you happen to find out about it?

A. How did I find out about it?

Q. Yes. A. The company told me.

Q. Who, in the company, told you?

A. Well, he did, the attorney.

Q. What attorney?

A. MacComber, their attorney.

Q. Where were you when this conversation took place? A. Stockton.

Q. How did you happen to go to Stockton?

A. At that time I lived in Stockton.

Q. Who first approached you about the fact that Wahyou had your stock?

A. The attorney told me the bank was selling that stock. They wrote a letter to the Smeed Com-

pany to pick the stock up and they wouldn't do it. They have a letter to that effect.

Q. That was in 1950? A. Yes.

Q. Can you tell me whether or not you were given any opportunity to redeem the stock yourself? A. Yes.

Q. This was an opportunity given you by the bank or Wahyou? A. By the bank.

Q. Did Wahyou ever give you an opportunity to redeem the stock? A. No.

Mr. Halley: Wait a minute. I will have to object to the form of that.

By Mr. Greenfield:

Q. After Wahyou acquired the stock, did he ever give you the chance to get it back?

A. No.

Q. So ever since 1950 Wahyou has had your stock, since 1950?

A. The Smeed Company was offered a chance to buy it, but they didn't do it.

Q. At the time Wahyou picked up your stock, how much did you owe him?

A. A little better than \$14,000.00 with the interest.

Q. You owed him the full amount of the original obligation? A. Yes.

Q. Before you entered into this assignment with the Smeed Company, did you discuss this with MacComber? A. Yes.

Q. You told MacComber you owed Smeed this money and discussed what to do about it?

A. I had MacComber offer to try and settle it.

Q. That was in 1950.

A. I had a friend who would give me \$5,000.00 to help me out and I made them the offer, but they wouldn't take no stock or take no settlement.

Q. Now when the Smeed Company told you they would want to have this debt secured or paid, one or the other, you discussed that with MacComber? A. Yes.

Q. And after that you did execute the assignment, and did you discuss that with MacComber?

A. No, I didn't.

Q. But he knew you were going to make the assignment? A. Half-way, yes.

Q. As a matter of fact the offer of settlement from MacComber on your behalf was made in February of 1951, was it not?

A. I don't remember.

Q. Do you believe it possible that your offer of \$5,000.00 in settlement, took place after you made the assignment?

Mr. Halley: If you have the original of that—
By Mr. Greenfield:

Q. Well, then Mr. Corbari you discussed the assignment you made to Smeed with MacComber after you had made it and as a result of your discussion he sent a letter to the Smeed Company on February the 9th, 1951, offering \$5,000.00 in settlement, is that right?

A. I told him that is what I wanted to do.

Q. You told him you made the assignment and you wanted to clear it up? A. Yes.

Q. At that time MacComber was attorney for the Diamond-S Ranch Company, was he not?

A. I guess he was, yes.

Q. Do you know whether MacComber has ever been Wahyou's personal attorney?

A. I don't know.

Q. But, as attorney for the corporation he was dealing closely with the president of it?

A. I don't know.

Q. I think you said you never discussed the assignment to Smeed with Wahyou? A. No.

Q. Are you sure of that?

A. I am sure of that now.

Q. Do you have any reason to believe that Wahyou knew of the assignment from any other source?

A. I wouldn't know that. That is his business.

Q. Now returning, Mr. Corbari, to the voluntary dissolution of this corporation which you consented to in September of 1950, do you recall attending any board of directors' meetings of the corporation where this was discussed?

Mr. Halley: The records of the corporation would be the best evidence of that.

Mr. Greenfield: We are not concerned with the best evidence here. We are trying to conduct a discovery procedure and I am entitled to go into it, although I grant that at the trial the minutes of the corporation would be the best evidence.

The Witness: No, I don't remember.

By Mr. Greenfield:

Q. Did you attend the meetings of the Board of Directors of the corporation from time to time?

A. From time to time, yes.

Q. Do you ever recall discussing with any of the other Directors at a meeting or otherwise, the dissolution of this corporation?

A. No, I don't.

Q. Do you have any idea why it was dissolved?

A. I thought they were going to sell the ranch at one time.

Q. Do you think they dissolved it then in preparation for selling it?

A. I believe so.

Q. Do you know if there was any other business purpose they had in mind?

A. No, to try to sell it.

Q. Do you know anything about the corporation reviving its charter in December, 1950?

Mr. Halley: There again, have you got the record on that?

By Mr. Greenfield:

Q. I just want to know whether he knows about it.

A. No.

Q. Were you ever consulted about its revival as a corporation?

A. No.

Q. What was your position with the corporation in December, of 1951?

A. Just ranch manager.

Q. Were you an officer of the corporation at that time?

A. I don't think I was, no.

Mr. Greenfield: I think that is all we have.

Mr. Halley: I don't have any questions.

Mr. Davidson: No questions.

Notary Public's Certificate attached.

[Title of District Court and Cause.]

DEPOSITIONS OF SAM WAHYOU AND
FORREST E. MACOMBER

taken pursuant to stipulation, a copy of which is annexed hereto, on Saturday, 18, October, 1952, commencing at the hour of 10:00 o'clock a.m. thereof at the offices of Forrest E. Macomber, Esq., 711 Bank of America Building, 343 East Main Street, Stockton, San Joaquin County, California, before Herman C. Spalinger, a Notary Public in and for the County of San Joaquin, State of California.

Laurence N. Smith, Esq., of the Law Firm of Smith and Ewing, Caldwell, Idaho; George Greenfield, Esq., of the Law Firm of Carver, McClenahan and Greenfield, Boise, Idaho, appearing for and on behalf of plaintiffs; Forrest E. Macomber, Esq., appearing for and on behalf of John Davidson, Reno, Nevada, Attorney for the Diamond-S Ranch Co.

SAM WAHYOU

called as a witness for and on behalf of plaintiff, being first duly and regularly sworn, testified as follows:

Statutory Cross-Examination

By Mr. Smith:

Q. Mr. Wahyou, will you state your name and residence?

A. Sam Wahyou, W-a-h-y-o-u; 1225 South San Joaquin Street, Stockton.

Q. And, Mr. Wahyou, just for the purpose of the record, Mr. Macomber is your attorney.

A. That's right.

Q. And he is also attorney for the corporation.

A. Yes, he and Davidson.

Q. Well, Mr. Macomber has been the attorney for the Diamond-S Ranch Corporation since it was started. Isn't that true? A. Yes.

Q. During all of its existence. A. Yes.

Q. And you were during all of that time also.

A. Yes.

Q. Now, Mr. Wahyou, the matter under consideration here is largely 310 shares of stock of the Diamond-S Ranch Corporation which was at one time owned by Archie Corbari. A. Yes.

Q. You now claim ownership of that stock.

A. Uh huh.

Q. Where, when and under what circumstances did you acquire the stock?

A. Well, I don't remember what date now.

Q. Well, just tell the—— A. I——

Q. Just make a statement as to what transpired that resulted in your owning the stock.

A. Well, I bought it from the Bank of America.

Q. And when was that purchase?

A. I don't remember.

Q. Mr. Wahyou, the answer of the Diamond-S Ranch Corporation in the case of G. A. Miller, et al., vs. A. E. Corbari and the Diamond-S Ranch, Corporation, states that you purchased the 300 shares of stock on May 21, 1951. Would that be the correct date? A. Something like that.

Q. Well, you don't now claim any other date than May 21, 1951, as the date of your acquiring the stock.

A. No, that's the only time. I bought the stock from the Bank of America because the bank got the stock.

Q. And how much money did you pay for the stock? A. About five thousand, I think.

Q. Do you know how much exactly you paid?

A. Well, I don't know. I got to see the record. I can't tell you offhand. But five thousand is pretty close there.

Q. Did you pay by check? A. No.

Q. How did you pay?

A. I'd take the notes over and I paid the bank later.

Q. I beg your pardon? I didn't get that.

A. I take the whole note from the bank.

Q. You just bought the note from the bank.

A. Yes.

Q. And paid the note later.

A. Yes, paid the note.

Q. And now, when did you take the notes from the bank? That was early in 1950, wasn't it?

A. No, it was the same date as Archie Corbari—Archie Corbari and his wife was there, I was there, and all this transaction was done entirely at the bank.

Q. Then you went to the bank with Corbari and Mrs. Corbari? A. Yes.

Q. And you paid the money to the bank and took up the notes. Is that correct?

A. No, I didn't pay the money. I told the bank, I say I take the notes over; I say I sign the note and I pay them later, see.

Q. And when was that done, what date?

A. Same day.

Q. On May 21, 1951.

A. I don't know just the day, but I got to look at this note, this record.

Q. Do you have that record available?

A. Well, maybe. I think I have. I could call the—the bank's got them.

Q. I beg your pardon?

A. Just call the bank up. He's got them.

Q. Oh, the notes are still at the bank.

A. Well, they are canceled now because I paid off.

Q. What date did you pay off?

Mr. Macomber: Oh, let's get at it from the——

Q. All right.

Mr. Macomber: He doesn't know a thing about it.

Mr. Smith: All right, Mr. Macomber. Off the record. (Off the record.)

FORREST E. MACOMBER

being first duly and regularly sworn testified as follows:

A. (By Mr. Macomber): I have in my hand a photostatic copy of a note in the sum of \$6,000, dated July 10, 1950, Demand Note, and it's signed by C-Arrow Cattle Company by Lafayette Smallpage and also by A. E. Corbari and Marie Corbari,

as individuals, and that note shows on the back of it that there was a balance of \$5,000 owing on it plus interest on October 17, 1950, at which time it was assigned without recourse to Sam Wahyou by the Bank of America. I will offer that as a——

Mr. Smith: Plaintiffs' Exhibit One and Two?

Mr. Macomber: Yes.

(Photostatic copies of notes above referred to marked for identification Plaintiffs' Exhibits One and Two respectively.)

A. (By Mr. Macomber): Now, that stock——

Q. And now just one minute. That was October 17, 1950, wasn't it?

A. (By Mr. Macomber): Yes. Now, with that note—by the way, that note was a renewal note of the balance due on a previous note to the Bank of America by Corbari. I don't know what the original note was for, the amount. Something had been paid on it. That information is not available to me.

Q. I see.

A. (By Mr. Macomber): With that original note the bank took a pledge of 310 shares of the Capital Stock in Diamond-S Company standing in the name of Archie Corbari evidenced by two certificates, one certificate No. 40, for 250 shares and one certificate No. 23 for 60 shares. Now with that note, and to secure that \$6,000-note, went a general pledge agreement for it; I will have that photostated.

Q. Yes. That will be by agreement, the pledge agreement will be photostated and made a part of the record here?

A. (By Mr. Macomber): That's right. Here is the original note of which the photostatic copy is in evidence. Now, I might say that at the time Mr. Wahyou bought this note the bank was demanding immediate payment or they were going to foreclose their security interest in the stock so by virtue of that pledge agreement that I just mentioned I, acting on behalf of Sam Wahyou, foreclosed the stock at a public auction under the pledge sale and attached to the stock certificates that I have in this Diamond-S Ranch Company stockbook are the notices of sale and the constable's affidavit of posting the notices, my certificate of—or my affidavit of sale showing that the property was sold to Gordon J. Aulik by myself acting as attorney-auctioneer on behalf of Sam Wahyou for \$5500, and that sale was on the 21st of May, 1951, 9:15 at the Courthouse. I will have copies of these notices made for you.

Q. Yes, if you will furnish photostatic copies as Exhibit 3.

A. (By Mr. Macomber): I'll furnish you just copies. They don't have to be photostats.

Q. All right.

A. (By Mr. Macomber): Probably be carbons. Now, at the time Mr. Corbari—Mr. Wahyou bought this stock, Mr. Corbari and his wife executed—no, Mr. Corbari executed an additional pledge agreement. You can read it. I'll furnish you a copy of that.

Q. Mr. Macomber, one question: Were these shares of stock ever issued in the name of Bank of America as pledgee in accordance with this pledge?

A. (By Mr. Macomber): The shares of stock were endorsed in blank by Mr. Corbari and in the possession of the Bank of America. That, I might say, is sufficient delivery of the pledge. They were never issued in the name of the bank.

Q. Wasn't it provided for in the pledge? It provided that it should be, and I wondered if you complied with that term of the pledge.

A. They were not issued in the name of the bank because immediately after the execution of that agreement Mr. Wahyou purchased the note, and their collateral——

A. (By Sam Wahyou): In fact, the bank wrote me two or three letters about that, too.

A. (By Mr. Macomber): What?

A. (By Mr. Wahyou): The bank wrote me two or three letters about that.

A. (By Mr. Macomber): O.K. Now, I will call your attention to a thing that might be of interest to you.

Q. Yes.

A. (By Mr. Macomber): And that is that this note mentioned in this second pledge agreement whereby Corbari was indebted to Zignago on a note in the sum of \$12,500, that note was actually made payable to me and I had sold it to Zignago and in order to—before Zignago would buy that note from me he insisted that both myself and Sam Wahyou guarantee the payment of it, and here is the copy of the guarantee I gave him and Mr. Wahyou gave him. I will furnish you a copy of that.

Q. All right.

A. (By Mr. Macomber): As you can see, Mr. Wahyou's object in buying the stock was to protect himself and myself on—if there be any—if the stock is worth more than he paid the bank for it, to protect himself on this obligation, he was acting as guarantor.

Q. Mr. Macomber, what was the value of the stock at the time this pledge was purchased from the bank?

A. I'd have to guess at that.

Q. What would be your guess?

A. My guess would be that it would be worth approximately twenty-five per cent of its face value.

Q. And what was its face value?

A. \$31,000. Do you want to know why?

Q. Yes.

A. (By Mr. Macomber): Because this ranch had been operated at a loss over—at the time this stock was purchased from the bank by Sam Wahyou, the Diamond-S Ranch Company had operated at a considerable loss. It was run down and it owed very large sums of money so that the book value of the stock, I would estimate to be not over twenty-five per cent of the face value.

Q. Have you available any financial statements of the Diamond-S Corporation?

A. (By Mr. Macomber): No, they are in the hands of the Diamond-S Ranch Company's auditor.

Q. Who is that?

A. (By Mr. Macomber): Mr. Black.

Q. And could we have furnished us a financial

statement as to the condition of the corporation on October 17, 1950; on May 21, 1951,—

A. (By Mr. Macomber): I doubt it because they don't make up financial statements on those dates.

Q. Then can we have—

A. (By Mr. Macomber): But I will attempt to secure for you financial statements as close to those dates as they are made up.

Q. All right.

A. (By Sam Wahyou): Last December.

A. (By Mr. Macomber): What?

A. (By Sam Wahyou): Got one last December.

Q. Last December? All right.

A. (By Sam Wahyou): One in August.

A. (By Mr. Macomber): Well, whatever—the closest ones I can get for you.

Q. Now, so there will be no misunderstanding, at the time that Mr. Wahyou paid off the Bank of America he—

A. (By Mr. Macomber): (Interrupting) He didn't pay off the Bank of America. He bought the note from the Bank of America.

Q. Well, at the time he bought the note from the Bank of America on October 17, 1950, he did that to protect himself for advances that—other advances that he had made to Archie.

A. (By Mr. Macomber): At that time Mr. Corbari owed him monies in addition to the ones I have told you.

Q. How much was that, if you know?

A. (By Mr. Macomber): No, I don't know.

Q. Could that be ascertained?

A. (By Sam Wahyou): Guaranteed one myself, fourteen thousand. Owed close to fourteen thousand. They owe me about around—then guarantee one around—around twelve thousand and something and you and I guarantee one note.

A. (By Mr. Macomber): Yes.

A. (By Sam Wahyou): And plus fifteen hundred, fourteen some he owe me.

Q. Now, did you, Mr. Wahyou, have any agreement with Mr. Corbari at the time you picked up this stock at the bank that he could have the stock back if he could pay you back the six thousand that you had to pay the bank?

A. (By Sam Wahyou): No, I didn't have no agreement.

Q. I beg your pardon?

A. I don't have no agreement with him like that.

Q. You didn't have any agreement at that time.

A. (By Sam Wahyou): No.

Q. Why, then, did you wait from November of 1950 until May of 1951 to foreclose the pledge?

Mr. Macomber: Object to that as argumentative.

Mr. Smith: Q. Well, where—

Mr. Smith: This is an exploratory type of deposition which is allowed under the Federal rules and I think its perfectly lawful. I'd like an answer.

Mr. Macomber: Well, I know but how can—well, go ahead.

Mr. Smith: Q. Why did you wait from the time you purchased this stock in November until May in order to foreclose it?

A. (By Sam Wahyou): I was to wait for a while—I don't know how long—because when I bought the stock from the bank I went to the Bank of America, I told them I don't take the stock from the bank, I was going to pay for it. I told the bank what I wanted in there. I said, "You got rules." I said, "You charge me. You just issue the note. We charge that." Then I give the paper to Macomber. I ask Macomber to look these things over and how could it be done sometime before, but I don't know why. Actually I don't know the regular rules, how they go through with it. I talked to Macomber sometime about this too, how he was going to do it.

Q. You talked to Archie Corbari concerning your picking up this note at the bank, didn't you?

A. Yes.

Q. And what did you say to Corbari about it?

A. I didn't say anything about it.

Q. Well, you discussed the matter of paying this note or purchasing it from the bank with Corbari, did you not?

A. Yes sir.

Q. What did you agree——

A. (By Sam Wahyou): (Interrupting) In fact, the bank was demanding for it.

Q. But why did you buy it from the bank?

A. (By Sam Wahyou): Because I would have the stock here and the stock is worth more money, oh, maybe \$10,000 worth more. He owes me money too. If the bank take that here I'm going to lose. I can't get no money from him. That's why I bought it from him.

Q. In other words, you bought it from the bank to protect yourself for the difference of what you had paid and the value of stock was.

A. That's right.

Q. Well, you knew, of course, you had been acquainted with Archie Corbari for years.

A. Yes, that's right.

Q. And you knew of his entanglements of one kind and another; you knew that he was indebted to Smeed, did you not?

A. I don't know but I know he owe the people money.

Q. Well, you knew that he had purchased cattle from the Smeed Estate in Caldwell and that the checks and drafts did not clear and that he owed Smeed at that time fourteen or \$16,000. Isn't that true?

A. No.

Q. You didn't know that.

A. I didn't know that.

Q. Or you hadn't discussed that with Archie?

A. I got nothing to do with it. How can I know how much he owe the people?

Q. You knew nothing of that transaction then?

A. No.

Q. With Smeed at all.

A. No.

Q. And now, you say that Mrs. Corbari came down to the bank on the day that you purchased these notes from the bank.

A. Yes.

Q. Why?

A. What do you mean, why?

Q. Why did they go to the bank if you just paid on those for your own account? Did they have to sign something down there?

A. (By Sam Wahyou): I don't know. I don't know whether they sign anything or not. I don't know. But the bank called me about—and foreclose these stock, all that going on there. They had been talking about it for several months, so one day the bank called me about that so I just happened to arrange to Archie and his wife to come in the bank and get this deal straight. I said, "I'm going to take the stock."

Q. And at the time you bought it you had no agreement that Archie could pay you back, if he could pay you back, the money you had in it.

A. No, I didn't have no agreement with him.

Q. And now, Mr. Wahyou, you have been a member of the Board of Directors of this corporation since it commenced.

A. Yes.

Q. And why—what discussions did the Board of Directors have that led you to the decision to dissolve the corporation on September 7th, 1950?

A. 1950? Yes, yes.

Q. What discussion?

A. (By Sam Wahyou): I had a deal that was going on there that the ranch will be sold. We want to dissolve that corporation when we sold the ranch but anyway it—we didn't sell the ranch so we reinstate back this entire matter.

Mr. Macomber: You understand him?

Mr. Smith: Yes, perfectly.

A. (By Sam Wahyou): Yes, that's what it is.

Q. And why—what decisions—what facts came about to make you decide to reincorporate the corporation or to revive the corporation, do you know?

A. (By Sam Wahyou): Well, I'll tell you why we did it, I don't want to say anything about it because I had discussed it with an accountant with our people, that's the way we shall do.

Q. What was that again?

A. We talked to our accountant and the attorney here that's the way we shall do, the tax part of doing this so that's what we did.

Q. You did it because of your attorney's advice relative to taxes.

A. Yes.

Q. And now, at that time Mr. Corbari was your attorney.

A. Huh?

Q. Mr. Macomber was your corporation attorney.

A. That's right.

Q. And he was also your attorney at that time.

A. That's right.

Q. And also Archie Corbari's.

A. Yes, I guess so. I don't know. I don't know Archie, who he use.

Q. Did you know that Archie had offered to pay \$5,000 in settlement of this debt to Smeed?

A. (Negative nod.)

Mr. Macomber: He shook his head no. Answer so he will get it, see.

A. (By Sam Wahyou): I don't know.

Mr. Smith: Q. And now, what other debts were owing to you by Corbari other than the one that was created by your purchase of the notes from the bank?

A. (By Sam Wahyou): I don't know but around fourteen-fifteen hundred dollars plus that note. Twelve thousand, guarantee note.

Q. You mean the one that was to—what is that name?

Mr. Macomber: Zignago.

Mr. Smith: Q. —Zignago?

A. (By Sam Wahyou): Yes.

Q. But the Zignago note was secured by a trust deed on some real estate. Did you have to pay that twelve thousand to Zignago?

A. I didn't have to pay him yet. I just went in town, give him the money, he wanted me to guarantee it.

Q. But at least yet you have not paid it.

A. No, I haven't paid it.

Q. And he owed you fourteen-fifteen hundred dollars other than that, Corbari owed you that amount.

A. Yes.

Q. That's all.

A. That's all.

Q. There were no other transactions in the matter at all.

A. No.

Q. Now, when you were discussing whether or not to dissolve the Diamond-S Corporation, was Corbari present at the meetings?

A. Yes, I think he is. No, he wasn't in the meeting. I don't know how—he was running the ranch out there. Let's see, the general meeting about the sale of the ranch, and he wasn't in the meeting. The time we go down to the title company he was there.

Q. When did you go to the title company and for what?

A. To sell the ranch.

Q. And where was that done, at Winnemucca?

A. No.

Q. Was that done here? A. At Oakland.

Q. At Oakland. A. Yes.

Q. Have you been at the ranch at Winnemucca recently? A. (Pause.)

Q. Do you go up there from time to time?

A. Yes.

Q. Were you there between the 1st of October, 1950, and May 21, 1951?

A. Sure, I am probably up there but I really don't know when. Can't be in six months I have never been there. I have been there a lot of times.

Q. You have been there a lot of times.

A. Yes.

Q. Then between the time the corporation was dissolved and the time you purchased this stock, do you know whether you have been in Humbolt County, Nevada?

A. Yes, but I don't remember now. But I have been up there quite often.

Q. Well, during that period of time? A matter of seven months, would you have been there for sure? A. 1950?

Q. Yes.

A. I couldn't tell you. I should have been up there all right. Six months—I ought to be up there every two months, three or four months.

Q. What was that again?

A. I say I ought to be up there quite often in the last four or five months.

Mr. Smith: As long as we have gone at this kind of backwards, may we ask you some further questions?

Mr. Macomber: Yes.

Mr. Smith: Then we'll just put it all in one.

Q. You handled the dissolution of the corporation.

A. (By Mr. Macomber): That's right.

Q. And you also handled the revival of the corporation.

A. (By Mr. Macomber): Yes sir.

Q. During all of that time you were Mr. Wah-you's attorney.

A. (Mr. Macomber): That's right.

Q. Both personally and the corporation attorney.

A. (By Mr. Macomber): That's right.

Q. And you also were Mr. Corbari's attorney.

A. (By Mr. Macomber): No.

Q. When had you ceased to be Mr. Corbari's attorney?

A. (By Mr. Macomber): I have never been. I have never been on a retainer with Mr. Corbari. He's consulted me as well as other attorneys from time to time, but you are an attorney and you know that we don't necessarily—that you are somebody's attorney continually.

Q. At least in the month of February, 1951, you wrote a letter to the Smeed Estate offering \$5,000 in settlement.

A. That's right.

Q. At that time you were at least Archie's attorney.

A. That was an isolated instance.

Q. You have represented him in prior litigation.

A. I have represented him in several matters, in litigation—quite a few judgments against him.

Q. Yes. And during 1950 and the early part of 1951 you had a considerable number of things to do for him? He was in and out of your office a good deal during that time?

A. No, he's never been in and out of my office a good deal. He's been in and out of the Diamond-S Ranch. He comes in very seldom. But usually if he got served with some papers he'd send them to me and I'd do what I could about it.

Q. At that time, in 1950, he was living here in Tracy and operating there at that time.

A. Yes. Well, even when he lived in Tracy I very seldom would see Mr. Corbari.

Q. At least you had correspondence with him during that time because an auto litigation was on at that time.

A. I think we talked——

Q. (Interrupting) The auto litigation that you remember that he got sued on.

A. No, I didn't represent him.

Q. What litigation was it that you represented him in?

A. Oh, various people sued him for—I don't remember them now. He had three or four suits. People sued him because he owed them money.

Q. And you represented him in that.

A. Yes.

Q. And if there were any questions concerning him and the Diamond-S Ranch he came to you. Is that true?

A. I don't recall that he ever consulted me about anything with reference to the Diamond-S Ranch because I doubt if I would have represented

him in the matter since I represented the Diamond-S Ranch.

Q. Now, Mr. Macomber, coming back to the matter of the foreclosure of this stock, the matters that you have stated in connection with it—that is, the sale and the purchase by Wahyou and the sale of the pledge by notes and the sale—have you told us all that you had to do with that transaction? Is there any other transaction concerning the stock or the deed with which you had anything to do?

A. I don't understand your question.

Q. You advised with Mr. Wahyou at the time he purchased the stock, the notes from the bank.

A. Mr. Wahyou arranged to purchase the note and the pledge agreement and the stock from the bank, and instructed me to proceed.

Q. And were there any other actions or steps taken other than the ones that you have testified to here? A. (Pause.)

Q. There were no other pledges made to anybody or redeemed from anybody? Nobody else instructed any——

A. Not that I know of.

Q. And there were no other actions started.

A. Not to my knowledge.

Q. In other words, the matters you testified to is all that was done in connection with the stock and with the foreclosure of the pledge.

A. Yes. Of course, I haven't related to you every step I took in connection with foreclosing the stock.

Q. Well, you—in the foreclosure your papers will indicate the steps you took.

A. That's right.

Q. You took no steps other than the ordinary statutory requirements in foreclosing of the ranch and selling of the security.

A. That's right.

Q. Mr. Wahyou, I want to come back to what transpired at the bank on the 17th of October, 1950, at the time these checks—or at the time this note was purchased from the bank. Now, you say you went in the bank and bought these notes.

A. (By Sam Wahyou): Yes.

Q. Or bought the note and the pledge.

A. (By Sam Wahyou): Yes.

Q. And how did you pay for it?

A. How I paid for it?

Q. Yes. A. I already told you.

Q. Tell us again.

A. (By Sam Wahyou): I told you the bank, I bought that from the bank, give me the note and the—I signed the note. I owe the bank that money.

Q. You borrowed the money from the bank to pay.

A. Pay that, yes.

Q. And picked up the notes.

A. That's right.

Q. Or picked up the note and the pledge.

A. That's right.

Q. So that you didn't write them a check; you secured the money from them.

A. That's right. That's what I did with the bank, I call in there and do something, according to so much money, and I walk in the bank and sign

the note. But that day I was in there at the bank I say, "Give me the note. I bought this. You give me all the papers." So I signed the note with them.

Q. And you subsequently paid the note.

A. Yes, that's right.

Q. When was that paid?

A. Oh, I don't know when. They got that at the bank. You got to find the record at the bank.

Q. In what way was the pledge agreement from the bank assigned to you, if it was?

A. Well, I don't have any way in going to the bank because I can walk in the bank here and tell them I want five thousand or \$10,000 and all I do is sign my name.

Q. And now, the pledge note, the pledge that secured the stock in Corbari at the time you picked up the note, how did they assign the pledge to you? You have a copy of that assignment, do you, Mr. Macomber?

A. (By Mr. Macomber): No, the pledge agreement was delivered with the note to me. I arranged for that.

Q. Subsequently.

A. (By Mr. Macomber): After he—after he arranged for payment.

Q. How, in the matter of time—when did the pledge agreement come into your possession, Mr. Macomber?

A. (By Mr. Macomber): Mr. Wahyou went in the bank and arranged for payment. I had nothing to do with that. Then he called me up. Either he called me up or the bank called me up and told me

to come get the papers. I went over there and arranged for the assignment of the note and delivery of the stock and the collateral pledge agreement all at the same time.

Q. And did they——

A. (By Mr. Macomber): (Continuing) Either the same day or the day after or within a few days of the time that he had paid for the purchase.

Q. Were there any other instruments signed by the bank other than the endorsement that appeared on the back of the note which is Plaintiffs' Exhibit One and Two?

A. (By Mr. Macomber): No, they delivered them to me.

Q. They delivered the stock and the pledge agreement and assigned the note.

A. (By Mr. Macomber): That's right.

Q. And that was all.

A. (By Mr. Macomber): Yes.

A. (By Sam Wahyou): All I want is what I am entitled to and what the bank is entitled to.

Q. I'm sorry, I didn't understand you.

A. (By Sam Wahyou): I want to take all the stock from the bank—I called Mac, somebody to go up there and get the papers and get everything from the bank. I don't want to leave it half way. Then I pay the note and pay the stock for them.

Q. Mr. Wahyou, were you interested in any way in the C-Arrow Cattle Company?

A. What is that?

Q. Were you interested in any way in the C-Arrow Cattle Company?

A. (Negative nod.)

Q. Better answer yes or no. A. No. No.

Q. He can't see you nod your head. You had no part of that transaction with Archie Corbari.

A. No.

Q. Mr. Macomber, are there now, or have there ever been, any other pledge agreements other than the two which we have discussed here and the others you are going to furnish us copies of?

A. (By Mr. Macomber): Not to my knowledge.

Mr. Smith: I think that is all. I have no further questions.

Mr. Macomber: No questions.

/s/ SAM WAHYOU,

Signature of Witness

/s/ FORREST E. MACOMBER,

Signature of Witness

Subscribed and sworn to before me on this 17th day of November, 1952.

[Seal] /s/ HERMAN C. SPALINGER,

Notary Public in and for the County of San Joaquin, State of California.

NO. 25724 C. Arrow Cattle Co.

DISCOUNT % \$ 1951 DUE January 6, 1951

\$ 6,000.00 Stockton CALIF. July 10, 1950

ON demand, if no demand is made then on January 6, 1951

FOR VALUE RECEIVED, I PROMISE TO PAY IN LAWFUL MONEY OF THE UNITED STATES OF AMERICA.

TO THE ORDER OF THE **Bank of America** AT ITS Hunter Square BRANCH IN
NATIONAL EXCHANGE ASSOCIATION

THIS CITY Six thousand and no/100 - - - - - DOLLARS
WITH INTEREST IN LIKE LAWFUL MONEY FROM date AT THE RATE OF 4 1/2 PER CENT

PER ANNUM UNTIL PAID, PAYABLE ON January 6, 1951 AND monthly
THEREAFTER, AND IN THE EVENT OF COMMENCEMENT OF SUIT TO ENFORCE PAYMENT OF THIS NOTE, I
AGREE TO PAY SUCH ADDITIONAL SUM AS ATTORNEYS' FEES AS THE COURT MAY ADJUDGE REASONABLE.

ADDRESS: 511 Stkn. Sav. Loan Bldg C-Arrow Cattle Co;

TELEPHONE: Archib. Carban
A. Carban

by Myself & 2 witnesses
[Signature]
[Signature]
[Signature]
[Signature]

[Title of District Court and Cause.]

PRETRIAL ORDER

The above matter came on this 18th day of January, 1955, for pretrial, at 2:00 p.m., Miles N. Pike, Laurence N. Smith and Mr. Ewing, of counsel for plaintiffs, John Davidson, of counsel for defendants, and John S. Halley, representing the defendants A. E. and Marie Corbari.

Nature of Case

This is an action wherein the plaintiffs seek to impress a lien on certain ranch property situate in Humboldt County, Nevada, the record title of which is in Diamond-S Ranch Co., a Nevada corporation. Plaintiffs predicate their theory of [95] the case on the fact that A. E. Corbari and wife assigned their stock in the Diamond-S Ranch Co. for the purpose of securing a promissory note executed by the Corbaris to John W. Smeed. It is asserted that by reason of such assignment plaintiffs have a proportionate interest in the assets of Diamond-S Ranch Co. property, and particularly in and to the real property situate in Humboldt County, Nevada.

Agreed Statement of Facts

All of the allegations contained in the first cause of action, being on the Corbari-Smeed note, are admitted save and except Corbari contends that he

paid an additional \$1,000.00 on the note for which he was not given credit.

All of the matters alleged in the second cause of action are admitted with the exception of the allegations going to illegality and fraud and these are denied.

All of the matters alleged in the third cause of action are admitted except illegality and fraud, and these are denied.

All of the matters alleged in the fourth cause of action are admitted save and except illegality and fraud, and these are denied.

The defendants, Zignego, Macomber, Thomas G. Lee, Toy Quong, Joe Sin, Yip K. Toon, and Herbert Jang, disclaim any right, title or interest in the property and assets of the Diamond-S Ranch Co., and/or in the stock thereof.

The Issues and Contentions

The issues are, as to the first cause of action, whether an additional one thousand dollars should be credited upon the Corbari-Smeed note; as to the remaining counts whether or not the admitted facts are sufficient to create a lien against the assets of Diamond-S Ranch Co., be it presently existing as a corporation, or dissolved and its [96] assets being presently held by its last board of directors as trustees in dissolution. Plaintiffs assert that the Court should declare such lien to exist; defendants position is that neither facts or law support such a position.

Proof

With the exception of proof bearing upon the additional payment of \$1,000.00 which the Corbaris assert they paid on the Smeed note, all of the proof is now before the Court by way of exhibits agreed in evidence at this pretrial, which exhibits are listed in Schedule "A" attached hereto and made a part hereof by reference.

Stipulations

It is stipulated that proof of the alleged \$1,000.00 payment on the Smeed note be submitted to the Court by affidavit with necessary supporting exhibits attached; copies to be served on plaintiffs' attorneys.

Order

Pursuant to discussion and stipulation of counsel, and on the basis of the foregoing comment, it is ordered as follows:

1. That the defendants, A. E. Corbari and Marie Corbari, have twenty days within which to submit proof by way of affidavit of the alleged payment of \$1,000.00 on the Smeed note.

2. That all of the exhibits referred to in Schedule "A" be and they hereby are admitted in evidence.

3. That the parties shall have ten days after submission of proof re the \$1,000.00 additional payment on the Smeed note to make any additional motions, after which the matter will be deemed submitted for decision on the record. [97]

4. That the action be, and it hereby is, dismissed with prejudice as to the defendants, D. W. Zignego and Forrest E. Macomber.

5. That respective counsel may suggest within ten days from this date any necessary or appropriate changes so as to conform to the pretrial discussion. None being offered the order will stand as final. Copies of any proposed changes must be served on counsel for the opposite party who shall have five days from receipt thereof to make and file his consent, or opposition, to such proposed changes, and/or to offer such amendments as deemed proper. It is suggested that counsel confer and agree on changes, reporting to the Court as follows: (1) Changes agreed on; (2) plaintiffs' changes not agreed by defendants; and (3) defendants' changes not agreed to by plaintiffs.

Dated this 18th day of January, 1955.

/s/ JOHN R. ROSS,

United States District Judge [98]

SCHEDULE "A"

Exhibits

It is stipulated that the following exhibits be admitted in evidence without objection, except as hereinafter noted:

1. Pledge Agreement to Bank of America from Corbaris and others, dated January 4, 1949.

2. Typewritten copy of Pledge Agreement dated September 18, 1950, signed by A. E. Corbari only, to Bank of America.

3. Affidavit of Forrest Macomber dated May 23, 1951.

4. Typewritten copy of Notice of Sale of Pledged Property at Public Auction, dated May 14, 1951, signed by Sam Wahyou.

5. Notice of Posting by Constable dated May 16, 1951.

6. Typewritten copy of Resolutions adopted by the Board of Directors of Diamond S Ranch Company at a Special Meeting at Stockton, California, on July 29, 1950, at the office of Forrest Macomber.

7. Typewritten copy of Written Consent of the Shareholders of Diamond S Ranch Company to Voluntary Dissolution—no date—meeting held July 29, 1950.

8. Photostatic certified copy, certified by John Koontz, Secretary of State, of Written Consent of Shareholders to Voluntary Dissolution filed in the office of the Secretary of State on September 7, 1950. Certified photostatic copy of same resolution.

9. Typewritten copy of photostatic copy of Certificate of Revival or Renewal of Corporate Charter of Diamond S Ranch Co.

Document entitled Appointment of Agents for Diamond S Ranch Company, certified to by Washoe County Clerk H. K. Brown by B. Buchanan. Agents are Sam Wahyou, K. R. Nutting and Thomas G. Lee. (Certified typewritten copy.)

**10. Original assignment, with recording data, dated October 31st, 1950, by A. E. and Marie Corbari to W. W. Lord, as trustee.

11. Photostatic copy of a Promissory Note dated January 6, 1951, to Bank of America, signed by Archie Corbari, A. Corbari and Marie Corbari, and C-Arrow Cattle Company, by Lafayette J. Smallpage, for \$6,000.00. Due date January 6, 1951. Date of note, July 10, 1950.

Photostatic copy of reverse side of note showing installment payments.

12. Promissory note dated December 31st, 1948, in the amount of \$15,041.34 executed by A. E. and Marie Corbari to John W. Smeed.

13. List and description of all real property situate in Humboldt County, Nevada, owned by Diamond S Corporation.

*14. Letter dated March 31st, 1949, from Bank of America to A. E. and Marie Corbari.

*15. Letter dated November 2nd, 1949, from Bank of America to Archie and Marie Corbari.

*16. Letter dated November 21st, 1949, from Bank of America to Archie and Marie Corbari.

*17. Letter dated March 25, 1950, from W. W. Lord to A. E. Corbari.

*Admitted in evidence subject to objections as to materiality.

**Admitted in evidence subject to objections as to materiality and competency.

July 11, 55. Exhibit 18. Diamond "S" Balance Sheet as of December 31, 1951 was ordered in evidence as Exhibit No. 18.

Note: Exhibit 11, Photostatic copy of front and

reverse side of promissory note of January 6, 51 is not found in files. [100]

[Endorsed]: Filed Jan. 25, 1955.

[Title of District Court and Cause.]

MOTION FOR SUMMARY JUDGMENT

The plaintiffs, by and through their attorneys of record, Smith & Ewing, Carver, McClenahan & Greenfield, and Pike & McLaughlin, hereby move the court to enter summary judgment for plaintiffs in accordance with the provisions of Rule 56 (a) and (c), Federal Rules of Civil Procedure, on the ground that the pleadings herein, the exhibits attached thereto, the depositions of Archie E. Corbari, Sam Wahyou, Forrest Macomber and W. W. Lord, including the Affidavit of W. W. Lord, filed June 3, 1955, and all the proceedings heretofore had herein show that plaintiffs are entitled to judgment in accordance with the prayer of their complaint as a matter of law.

SMITH & EWING

CARVER, McCLENAHAN &

GREENFIELD

PIKE & McLAUGHLIN

/s/ By MILES N. PIKE,

Attorneys for Plaintiffs [101]

NOTICE OF MOTION FOR SUMMARY JUDGMENT

To Archie E. Corbari, Marie Corbari and to John S. Halley, their attorney; to Sam Wahyou, Dia-

mond S. Ranch Co., Forrest E. Macomber, A. E. Corbari, Sam Wahyou, K. R. Nutting, and Thomas G. Lee, trustees for the assets of Diamond S Ranch Co., Thomas G. Lee, Toy Quong, Joe Sin, K. R. Nutting, Yip K. Toon, Herbert Jang, and D. W. Zignego, and to John Davidson, their attorney:

You and each of you will please take notice that upon the pleadings herein, the exhibits annexed thereto, the depositions of Archie E. Corbari, Sam Wahyou, Forrest Macomber and W. W. Lord, and all the proceedings heretofore had herein, the undersigned will move this court at the United States Courthouse at Carson City, Nevada on the 11th day of July, 1955 at 10 o'clock a.m., or as soon thereafter as counsel can [102] be heard, for an order under Rule 56, Federal Rules of Civil Procedure, for summary judgment in favor of plaintiffs upon all the grounds as set forth in the moving papers herein, and for such other and different relief as to the court may seem just and proper in the premises.

SMITH & EWING
CARVER, McCLENAHAN &
GREENFIELD
PIKE & McLAUGHLIN

/s/ By MILES N. PIKE,

Attorneys for Plaintiffs

[103]

[Endorsed]: Filed June 24, 1955.

[Title of District Court and Cause.]

MOTION FOR SUMMARY JUDGMENT AND
FOR JUDGMENT ON THE PLEADINGS

Now come the Defendants Sam Wahyou; Diamond-S Ranch Co., a Nevada Corporation; A. E. Corbari, Sam Wahyou, K. R. Nutting and Thomas G. Lee, trustees for the assets of Diamond S Ranch Co.; Thomas G. Lee; Toy Quong; Joe Sin; K. R. Nutting; Yip K. Toon; [130] Herbert Jang; and move the Court for a Summary Judgment (Rules of Civil Procedure, Rule 56) in their favor and for a Judgment on the Pleadings (Rule 7c of the Rules of Civil Procedure) in their favor, and for the reasons therefore say:

These moving Defendants are entitled to a Judgment on the pleadings and a summary Judgment on the ground that the admitted facts are insufficient to create any lien in favor of Plaintiffs against the assets of Diamond-S Ranch Co.

Dated: June 15, 1955.

/s/ JOHN DAVIDSON,
Attorney for said defendants

NOTICE OF MOTION

To: Plaintiffs above-named and to Smith & Ewing; Carver, McClenahan & Greenfield; and Pike & McLaughlin, their Attorneys.

You, and each of you, will please take notice that the undersigned will bring the above-entitled mo-

tion on for hearing before this Court at Carson City, Nevada, on Monday, the 11th day of July, 1955, at 10:00 o'clock a.m. of that day, or as soon thereafter as Counsel can be heard.

/s/ JOHN DAVIDSON,

Attorney for said defendants [131]

[Endorsed]: Filed June 16, 1955.

In the United States District Court for the
District of Nevada

No. 1029

G. A. MILLER, W. W. LORD, RALPH SMEED,
L. H. STAUS and JACK SMEED, trustees of
JOHN W. SMEED ESTATE, Plaintiffs,

vs.

ARCHIE E. CORBARI, otherwise known as A. E.
CORBARI, MARIE CORBARI, SAM WAH-
YOU, DIAMOND-S RANCH CO., incorpo-
rated under the laws of Nevada, et als.,
Defendants.

OPINION AND DECISION ON MOTIONS FOR SUMMARY JUDGMENT

The above matter being at issue it was set for pretrial on the 18th day of January, 1955, at which time the Court made and entered its pretrial order. On June 16th, 1955, defendants (except D. W. Zignego and Forrest E. Macomber as to whom the ac-

tion has been dismissed with prejudice) filed their motion for summary judgment pursuant to Rule 56 and for judgment on the pleadings pursuant to Rule 7(c). The plaintiffs filed their motion for summary judgment under Rule 56(a)(c) on June 14th, 1955. Points and authorities in support of the respective motions were filed, and the motions were argued on the 11th day of July, 1955.

The plaintiffs' motion for summary judgment was supported by the depositions of Archie E. Cobari, Sam Wahyou, Forrest Macomber and W. W. Lord, and also an affidavit by W. W. Lord. In considering the respective motions of plaintiffs and defendants the Court had before [145] it (1) all of the pleadings, (2) the depositions and affidavit above referred to, (3) the Court's pretrial order, (4) defendants' request for admissions and plaintiffs' response thereto, (5) the eighteen exhibits referred to in the schedule of exhibits attached to the pretrial order, and (6) the stipulation of the parties that they had no further evidence to offer.

Nature of Case

By this action the plaintiffs seek to impress a lien against the property of Diamond-S Ranch Co., one of the defendants, and particularly the real property referred to in Exhibit "C" attached to the original and amended complaint, said real property being situate in Humboldt County, Nevada, the record title being in the Diamond-S Ranch Co., a Nevada corporation. Plaintiffs claim the lien in

their favor by reason of an assignment by A. E. Corbari and Marie Corbari, his wife, dated October 31st, 1950, whereby Corbari and his wife assigned to W. W. Lord, as trustee for John W. Smeed, deceased, all their

“right, title and interest in and to all of my partnership interest in the assets of a certain partnership formed by reason of the dissolution of Diamond-S Ranch Co., a Nevada corporation, and in and to any profits arising from the operation of said partnership.”

There was no actual indorsement and/or delivery of the 310 shares of Corbari stock in the Diamond-S Co., at the time the written assignment was made, or at any later time. At the time of the delivery of the assignment to Lord the Corbari stock certificates evidencing his interest in the Diamond-S were in the actual possession of the Bank of America, Hunter Square Branch, Stockton, California, having been delivered to the Bank by Corbari by way of pledge. [146]

Findings of Fact

Since the facts are somewhat involved the Court states them here in chronological order and as findings of fact. Diamond-S Ranch Co. is a Nevada corporation incorporated December 17, 1945, for the purpose of owning and operating ranch property situate in Humboldt County, Nevada. Of the 1572½ shares of stock issued by the corporation Corbari owned 310 shares, the defendants Sam Wahyou, Thomas G. Lee, Toy Quong, Joe Sin, K. R. Nut-

ting, Yip Q. Toon and Herbert Jang owning the balance. On January 4th, 1949, Corbari made and executed to Bank of America, Hunter Street Branch, a general assignment and pledged his 310 shares of Diamond-S stock to the Bank to secure certain indebtedness for which he was wholly or jointly liable.

On September 18th, 1950, Corbari made and executed to the Bank a second pledge agreement securing a promissory note to the Bank dated July 10, 1950, in the amount of \$6,000.00, and also to secure his note to one D. W. Zignego, one of defendants, in the sum of \$12,500.00 on which there was a balance due of \$10,000.00 plus interest, and to secure an indebtedness due one Forrest E. Macomber, another of the defendants named, in the amount of \$12,000.00 plus interest. The pledge agreement of September 18, 1950, was to secure the indebtedness to the Bank, Zignego and Macomber in the order named.

About a week previous to this pledge agreement, on September 7th, 1950, the Diamond-S Ranch Co. filed a Certificate of Corporate Dissolution with the Secretary of State. On October 17th, 1950, Sam Wahyou bought from the Bank the Corbari note, on which there was a balance due of \$5,000.00, and the Bank assigned and delivered to him the Corbari note and the pledged Corbari stock consisting of 310 shares in the Diamond-S Ranch. [147]

On October 31st, 1950, Corbari, who had become indebted to Smeed during his lifetime in connection with the purchase of cattle, executed an assignment

to W. W. Lord, testamentary trustee for Smeed. The assignment was to secure the payment of \$15,041.34 plus interest, being the then amount of Corbari's indebtedness to the Smeed estate. The assignment to Lord, as one of the trustees for the Smeed Estate, contained the following recital:

“Now, therefore, in consideration of the premises, and to secure the payment of said indebtedness, I do hereby sell, assign, transfer and set over unto W. W. Lord, as Trustee, all my right, title and interest in and to all of my partnership interest in the assets of a certain partnership formed by reason of the dissolution of Diamond-S Ranch Co., a Nevada corporation, and in and to any profits arising from the operation of said partnership. I further state that I was the owner of 310 shares of stock in said Diamond-S Ranch Co., and that the total outstanding shares of stock in said company was 1,572½ shares, and that my interest in the partnership and the assets of the partnership formed in connection with the dissolution of said Company, is in the same proportion as was my holding of stock in the total outstanding issue thereof.”

It is to be noted that there was no indorsement or delivery of the Corbari stock certificates to Lord, the certificates having been delivered and pledged to, and retained by, the Bank as above recited.

The Corbari note to the Bank, together with the pledged stock, having been sold, assigned and delivered by the Bank to Wahyou, on October 17th, 1950, Wahyou, through his agent and attorney, Mac-

omber, noticed the pledged stock for pledgee's sale at public auction to be sold on May 21, 1951. Pursuant to said notice of sale the pledged Corbari stock, 310 shares, was sold on the 21st day of May, 1951, and purchased for the account of Wahyou for the sum of \$5,500.00.

On December 7, 1951, the Diamond-S Ranch Co., by and through its then stockholders, Corbari not being named as [148] such as Wahyou then owned his stock, filed a Certificate of Corporate Revival with the Secretary of State reinstating the corporation as of September 7th, 1950, which was the date of its prior dissolution.

The plaintiffs, trustees of the Smeed Estate, assert that at the time of the October 31, 1950, assignment to them by Corbari, or immediately prior thereto and while the matter of the assignment was under discussion, Corbari had represented to them that the Corbari stock was not subject to any outstanding lien or pledge. This is denied by Corbari as indicated by his deposition on file. In any event it would appear that the plaintiffs had notice of a lien against the stock some months prior to the October 31, 1950, assignment. See letter from W. W. Lord, trustee, to Corbari, of date March 25th, 1950, Exhibit 17, reading as follows:

“Dear Arch:

When you were here a few weeks ago, we made an agreement whereby we could get a second lien on the stock of your Nevada Corporation. This agreement was made at your suggestion and it

seemed to us, as trustees of the Smeed property, that it was as fair as could be considering our position.

We have now heard from a lawyer in California refusing the second lien and wanting the trustees to pay off the bank in California. We are in no position to do what he suggests and we are wondering if he misunderstood what we wanted to do or if you have changed your mind.

We are trying to close the estate and this is one of the few items to be determined. Please let us hear from you by return mail what to do.

Sincerely yours,

John W. Smeed Estate
By: W. W. Lord, Trustee."

Comment

On the basis of this factual situation the plaintiffs filed their original complaint in this Court on the 19th [149] day of August, 1952, filing an amended complaint on the 21st day of October, 1954. The amended complaint alleges that on December 31, 1948, Corbari executed his note to Smeed, and that at the time of the filing of the complaint Corbari owed the Smeed Estate \$14,291.34, plus various interest items. That on September 7, 1950, the

"defendant corporation filed with the Secretary of State of State of Nevada the papers necessary to effect a voluntary dissolution of said corporation under Section 1664 (64) of the code

of laws of the State of Nevada, (and) the Secretary issued the certificate therein provided for that said corporation was dissolved, and on that day said corporation was dissolved.”

That the then board of directors, including Corbari and Wahyou, became trustees of the corporation and of its assets. That the trustees failed to carry out their duties and wind up the affairs of the corporation but continued to actively operate its business. That on December 7, 1951, a Certificate of Revival or Renewal of Corporate Charter was filed with the Secretary of State. The Certificate recited the dissolution on September 7, 1950, and also that the corporation was

“carrying on the business permitted by Sections 65 and 66, Chapter 177, Statutes of Nevada of 1925, as amended, and desires to renew or continue through revival its existence* * * .”

To this certificate was attached a list of the then stockholders which list indicated that as of October 10, 1951, Corbari was not a stockholder. This, in view of the purchase of the Corbari stock at the sale of the pledged stock on May 21, 1951, was a correct statement.

In Count Three of their amended complaint, plaintiffs set-forth the theory on which they seek to impress a lien on the assets of the corporation, namely, that the entire [150] series of transactions whereby Wahyou purchased the Corbari-Bank of America note and received the pledged Corbari stock, were fraudulent and void as to the plaintiffs. That by the terms of Corbari's assignment to the

trustees of the Smeed Estate on October 31st, 1950, the trustees had acquired all of Corbari's interest in the assets of the dissolved Diamond-S Ranch Co. It is to be observed that prior to the date of this assignment, October 31, 1950, all of the Corbari stock which the Bank held as a pledge had been by the Bank delivered to Wahyou on the 17th of October, 1950, and that from that date on Wahyou held the stock as pledge until he acquired ownership by purchase at the pledge sale on May 21, 1951.

Plaintiffs say that as one of the directors of the Company at the time of dissolution on September 7, 1950, Wahyou became a trustee for the stockholders and creditors of the corporation; that by reason thereof a fiduciary relationship existed between him and Corbari and the creditors, and that while he was acting as trustee for the purpose of winding up the affairs of the dissolved corporation he could not trade in the Corbari stock for his own benefit; that Corbari, Wahyou, and Macomber conspired to defraud the plaintiffs of the benefits accruing to them by virtue of the assignment of October 31, 1950.

Plaintiffs by their amended complaint pray (1) for judgment against A. E. Corbari and his wife for the balance due on their note executed to Smeed, being \$14,291.34 together with several items of interest; (2) that the Court decree the plaintiffs to have a share in the assets of the corporation in proportion to the percentage that the 310 shares of Corbari stock bears to the total issued stock of 1572½ shares; (3) that all the remaining stockholders, [151] officers and statutory trustees of the

corporation account for any and all property and profits coming into their hands since the date of dissolution, September 7, 1950; (4) that the Court impress a lien against all of the corporate property for the payment of the balance of principal and interest due on the Corbari-Smeed note; (5) that the assets of the corporation be sold and the plaintiffs paid from the moneys received; (6) and that plaintiffs have personal judgment, jointly and severally, against the defendants Wahyou, Macomber, Nutting, Lee, Quong, Sin, Toon and Jang, for the sum of \$14,291.34 balance due on the Corbari-Smeed note, plus the various items of interest.

The Issues

The pre-trial order, referring to the issues presented by the pleadings states as follows:

“The issues are, as to the first cause of action, whether an additional one thousand dollars should be credited upon the Corbari-Smeed note; as to the remaining counts whether or not the admitted facts are sufficient to create a lien against the assets of Diamond-S Ranch Co., be it presently existing as a corporation, or dissolved and its assets being presently held by its last board of directors as trustees in dissolution.”

First Cause of Action

As to the first cause of action, being against the defendants A. E. Corbari and Marie Corbari, the Court finds that these defendants are indebted to

the Smeed Estate in the amounts set-forth in Paragraph VI of the amended complaint, namely, for the sum of \$14,291.34, plus interest at 5% per annum on the sum of \$15,041.34 from December 31, 1948, to December 31, 1949, plus interest on \$15,041.34 at 8% per annum from December 31, 1949, until November 22, 1950, plus interest on \$14,291.34 at 8% per annum from November 22, 1950, until paid, plus a reasonable attorney [152] fee which the Court fixes at ten (10%) percent of the total amount of principal and interest.

During the pre-trial there was some controversy as to whether Corbari had been given credit for an additional \$1,000.00 payment on the note for which he had received no credit. In this connection the pre-trial order required the parties to submit further proof on this point.

Pursuant to this requirement the affidavit of W. W. Lord, one of the plaintiffs, was filed herein on the 3rd day of June, 1955, and the statements therein made by Lord stand uncontradicted. It is indicated that the confusion as to the \$1,000.00 payment arose by reason of Corbari having given a \$1,000.00 check as a payment on the note which check was dishonored for lack of sufficient funds to pay the same, thus creating a situation where Corbari was entitled to no credit on his note. The Court finds these matters as set-out in the Lord affidavit to be true.

It is to be observed that plaintiffs pray for a judgment on the Corbari note against the defendants Wahyou, Macomber, Nutting, Lee, Quong, Sin,

Toon and Jang. The first cause of action being an action on the note does not concern the defendants other than Corbari and his wife, and plaintiffs are not entitled to a judgment against any of the other defendants named.

Second Cause of Action

This cause of action has to do with the legal effect of the dissolution and reinstatement of Diamond-S Ranch Co. under Section 1664 (64), N.C.L., 1929. Plaintiffs have no quarrel with the legal procedure by which the dissolution came about or the reviver was invoked, but assert that after the dissolution the members of the last board of directors became statutory trustees with power only to wind [153] up and terminate the affairs of the dissolved corporation, and that such power went no further than to dispose of the corporate assets, make payment to the creditors, and thereafter make a pro-rata distribution to the stockholders of any remaining money or assets. The plaintiffs assert that instead of winding up the affairs of the dissolved corporation the directors-trustees continued to operate the business of the corporation as a going concern and to all intents and purposes as though it had never been dissolved.

Plaintiffs further urge that the attempted revival of the dissolved corporation was fraudulent for the reason that the "Appointment of Agents," being an affidavit filed with the Secretary of State in connection with the revival proceedings, was false and fraudulent in that whereas it stated that the filing

of the certificate for revival was authorized by the unanimous consent of all of the stockholders such was not the fact; that as a matter of law there were no stockholders, in a legal sense, after the date of dissolution, and in any event the affidavit did not list Corbari as the owner of 310 shares of stock.

Plaintiffs further urge that the affidavit failed to disclose the consent of the successors in interest of the Corbari stock to the revival proceedings, at the same time admitting that the Corbari stock was included in the designation of number of shares of stock owned by Wahyou, his ownership being listed as 631 shares which was 310 shares (amount of Corbari's stock) in addition to his original ownership of 321 shares. Plaintiffs contention in this respect is based upon their major premise that all of the actions of the directors-trustees after September 7th, 1950, date of dissolution, were fraudulent and void, and that all of the acts whereby Wahyou obtained the Corbari stock were [154] fraudulent and void, and were all a part of a conspiracy to defraud the plaintiffs of the rights acquired by them under the Corbari-Lord assignment of October 31, 1950.

The Court finds that the defendant Wahyou lawfully acquired the Corbari stock, and that all legal requirements were observed in the dissolution and revival of the corporation, and therefore finds against the plaintiffs on Count Two of the complaint.

Third Cause of Action

This count is based on the proposition that the entire series of acts by which Wahyou obtained the

Corbari stock were conceived in fraud, and executed in furtherance thereof. The Court is unable to find any evidence of fraud and holds that by virtue of the purchase of the Corbari stock at the sale of pledged property, May 21, 1951, Wahyou became the owner of, and entitled to, all of the benefits represented by the Corbari stock; that such sale and the acquiring of the Corbari stock by Wahyou, then a creditor of Corbari to the extent of some \$12,-000.00, was but the normal and rational procedure to be followed by one in his position; that in connection therewith he breached no fiduciary relation to the plaintiffs, defendants, or any of the other creditors of the corporation; that the acts complained of were not tinged with fraud as against plaintiffs and/or any of the creditors of the corporation; and that any rights that the plaintiffs may have had in or to said stock, or in or to a proportional share in the assets of the corporation, were extinguished by sale of pledged property on May 21, 1951.

In this connection, and before proceeding further, the Court will note the plaintiffs' claim that (1) at the time Corbari made his assignment to Lord, October 31, 1950, he [155] represented to the trustees that the stock was clear of liens. This Corbari denied, and it is evident from Lord's letter to Corbari dated March 25, 1950, that Lord knew of a prior assignment and/or pledge of the Corbari stock several months prior to Corbari's assignment to him. The Court takes the position that this knowledge continued up to and including the date

of the execution and delivery of the assignment. In any event it was sufficiently close to that occasion to have put plaintiffs, as reasonably prudent persons, on notice that there was sufficient reason to question the status of the stock, and to merit further inquiry on their part. Had they inquired, the true status of the stock could have been easily ascertained. In any event a false representation by Corbari to Lord made in connection with the assignment would not be binding on Wahyou unless it could be shown that Wahyou also had knowledge of such false representation and thereafter by his conduct in connection with the sale of the pledged stock he became party to a conspiracy, as plaintiffs allege, to defraud the plaintiffs.

Based on the depositions on file herein, and particularly the deposition of Corbari and Wahyou, the Court finds that Corbari did not represent to Lord that the stock was "in the clear", but in any event if such a statement was made the Court finds that it was not relied upon by the plaintiffs. They appear to have taken the assignment for what it was worth to add security to a then existing debt evidenced by the unsecured note of date December 31, 1948, in the amount of \$15,041.34, and with knowledge that Corbari was in a "bad way" financially, thus indicating that they felt they should take every precaution to secure the Smeed indebtedness and note, and inquire afterward. That this [156] was the thought of plaintiffs is borne out by the wording of the assignment prepared by plaintiffs' attorney wherein no specific reference is made to

the stock, and also by the fact that plaintiffs did not demand, obtain or get, an actual physical delivery of the Corbari stock certificates.

The Court further finds that there is no proof that Wahyou, at the time of the purchase of the stock at the pledge sale had any knowledge of the Corbari assignment to Lord, as trustee for the Smeed Estate, nor of any representation, true or false, made by Corbari to Lord in connection therewith.

The Court further finds that there was no fraud on the part of any of the defendants named in connection with any of the acts by them performed, as complained of in the complaint, including the dissolution and revival of the corporation, and the acts and transactions in connection with the acquisition of the Corbari stock by Wahyou.

Fourth Cause of Action

What has been heretofor said will dispose of the contentions made by plaintiffs in Count Four of their amended complaint.

Conclusions of Law

As conclusions of law based upon the foregoing finding of facts the Court concludes:

1. That no genuine question of fact exists as to the First Cause of Action and that plaintiffs are entitled to summary judgment against A. E. Corbari and Marie Corbari on said First Cause of Action for the amount of principal and interest due on the Corbari note to Smeed of date Decem-

ber 31, 1948, as alleged in Paragraph VI of plaintiffs' amended complaint, together with an attorney fee in connection therewith in an amount equal to 10% of the total [157] amount of principal and interest.

2. That the defendants are entitled to a summary judgment against the plaintiffs upon said Counts Two, Three and Four of the amended complaint.

It is therefore ordered that plaintiffs' motion for summary judgment as to the First Count of their amended complaint, be and it is hereby granted, and that defendants' motion for summary judgment on said Count be denied.

It is further ordered that the defendants' motion for summary judgment as to the Second, Third and Fourth Counts of the Amended Complaint, be, and it is hereby granted, and that the plaintiffs' motion for summary judgment on said Counts is hereby denied.

It is further ordered that the plaintiffs shall have judgment against the defendants Archie E. Corbari and Marie Corbari for their costs, and that the defendants, except Archie E. Corbari and Marie Corbari, shall have judgment against plaintiffs for their costs.

Let judgment be entered accordingly.

Dated at Carson City, Nevada, this 11th day of August, 1955.

/s/ JOHN R. ROSS,

United States District Judge. [158]

[Endorsed]: Filed Aug. 11, 1955.

[Title of District Court and Cause.]

CERTIFIED COPY OF DOCKET ENTRY OF
AUGUST 11, 1955

Filing and Entering Opinion and Decision on
Motions for Summary Judgment.

Entering Judgment: Judgment, It is therefore
Ordered that Plaintiffs motion for Summary Judgment
as to the First Count of their Amended Complaint,
be and it is hereby granted and that Defendants
Motion for Summary Judgment on said Count be
denied.

It Is Further Ordered that the Defendants
motion for Summary Judgment as to the Second,
Third and Fourth Counts of the Amended Complaint,
be, and it is hereby granted and that Plaintiff's
motion for Summary Judgment on said Counts
is hereby denied.

It Is Further Ordered that the Plaintiffs shall
have judgment against the defendants Archie E.
Corbari and Marie Corbari for their costs and
that the defendants except Archie E. Corbari and
Marie Corbari, shall have judgment against plaintiffs
for their costs. Let judgment be entered accordingly.

August 11, 1955. Counsel notified this day of
above entries.

Attest: A true and correct copy.

[Seal] /s/ OLIVER F. PRATT,
Clerk

[Title of District Court and Cause.]

NOTICE OF APPEAL

Notice Is Hereby Given, that G. A. Miller, W. W. Lord, Ralph Smeed, L. H. Staus and Jack Smeed, Trustees of John W. Smeed Estate, hereby appeal to the United States Court of Appeals for the Ninth Circuit from the Judgment of this Court denying plaintiffs' motion for Summary Judgment as to the Second, Third and Fourth Counts of the Amended Complaint and granting the motion for Summary Judgment of defendants Sam Wahyou, Diamond-S Ranch Co., Sam Wahyou, K. R. Nutting, and Thomas G. Lee, as trustees for the assets of [163] Diamond-S Ranch Co., Thomas G. Lee, Toy Quong, Joe Sin, K. R. Nutting, Yip K. Toon, and Herbert Jang, otherwise known as Herbert Jong, as to the Second, Third and Fourth Counts of the Amended Complaint, said judgment having been entered in this action on August 11, 1955.

PIKE & McLAUGHLIN,
SMITH & EWING,
CARVER, McCLENAHAN &
GREENFIELD,

/s/ By MILES N. PIKE,
Attorneys for Plaintiffs

Acknowledgment of Service attached. [164]

[Endorsed]: Filed September 9, 1955.

[Title of District Court and Cause.]

BOND ON APPEAL

Know All Men By These Presents that, Whereas, the plaintiffs above named have filed their Notice of Appeal from certain portions of that Judgment entered in the above-entitled Court on August 11, 1955, all as more particularly appears in said Notice of Appeal filed with the Clerk of the above-entitled Court on this date,

Now, Therefore, in consideration of the premises, the undersigned, United States Fidelity and Guaranty Company, a corporation duly organized and doing business under and by virtue of the State of Maryland, and authorized to do business in the State of Nevada, and duly licensed therein for the purposes of making, [165] guaranteeing and becoming sole surety upon bonds and undertakings, does hereby undertake, through its undersigned duly authorized and empowered agent and representative, and the condition of this bond is that if the said appeal by plaintiffs is dismissed or the Judgment affirmed or if the appellate Court modifies said Judgment and awards costs against the plaintiffs, and if the said plaintiffs shall pay the amount of such costs, then this bond is void, otherwise to be and remain in full force and effect, in the sum of Two Hundred Fifty Dollars (\$250.00), in which amount the undersigned is bound to pay the defendants.

Dated this 7th day of September, 1955.

UNITED STATES FIDELITY &
GUARANTY COMPANY,

[Seal] /s/ LLOYD S. HOBRON,

Attorney-in-Fact

BISBY-McKNIGHT INSURANCE
& REAL ESTATE, INC.,

[Seal] /s/ LLOYD S. HOBRON,

Resident Agent

Notary's Certificate attached.

Acknowledgment of Service attached. [166]

[Endorsed]: Filed September 9, 1955.

[Title of District Court and Cause.]

APPELLANTS' STATEMENT OF POINTS

Pursuant to Rule 17 (6) of the Rules of the above entitled Court, appellants do hereby make the following statement of points upon which they intend to rely on appeal:

1. The Court erred in denying plaintiffs' Motion for Summary Judgment as to the Second, Third and Fourth Counts of the Amended Complaint.

2. The Court erred in granting the Motion for Summary Judgment of defendants, Sam Wahyou, Diamond-S [160] Ranch Co., Sam Wahyou, K. R. Nutting and Thomas G. Lee, as trustees for the assets of Diamond-S Ranch Co., Thomas G. Lee, Toy Quong, Joe Sin, K. R. Nutting, Yip K. Toon, and Herbert Jang, otherwise known as Herbert

Jong, as to the Second, Third and Fourth Counts of the Amended Complaint.

3. The Court erred in making its Findings of Fact as to the Second, Third and Fourth Causes of Action of the first amended complaint, and such Findings of Fact are against the weight of the evidence, in conflict with the admitted facts, and are clearly erroneous.

4. The Court erred in making its Conclusion of Law No. 2 wherein it found as a Conclusion of Law that defendants are entitled to a summary judgment against the plaintiffs upon Counts Two, Three and Four of the first amended complaint.

5. The Court erred in failing to find as a fact that the defendant, Sam Wahyou, at the time of his purchase of the Corbari stock, was a trustee of the assets of the then dissolved Diamond-S Ranch Co., and as such trustee had the duty of caring for and holding the assets of the Ranch Company for the benefit of his fellow stockholders and their assignees.

6. The Court erred in failing to find as a Conclusion of Law that plaintiffs were entitled to Summary Judgment against the defendants as to the Second, Third and Fourth counts of the first amended complaint. [161]

7. The Court erred in failing to find that as a result of the Corbari assignment to the plaintiffs that the plaintiffs acquired an interest in the assets of the dissolved Diamond-S Ranch Co.

8. The Court erred in finding that the sale of the

certificate of stock in the Diamond-S Ranch Co. was a valid sale.

9. The Court erred in failing to find that there was constructive fraud in the sale of stock to Wahyou.

PIKE & McLAUGHLIN,
SMITH & EWING,
CARVER, McCLENAHAN &
GREENFIELD,

/s/ By MILES N. PIKE,
Attorneys for Plaintiffs

Acknowledgment of Service attached. [162]

[Endorsed]: Filed October 1, 1955.

[Title of District Court and Cause.]

CERTIFICATE OF CLERK

I, Oliver F. Pratt, Clerk of the United States District Court for the District of Nevada, do hereby certify that the accompanying documents and exhibits, listed in the attached index, are the originals filed in this court, or true and correct copies of orders entered on the minutes or dockets of this court, in the above-entitled case, and that they constitute the record on appeal herein as designated by the parties.

In Witness Whereof, I have hereunto set my hand and affixed the seal of said District Court this 6th day of October, A. D. 1955.

[Seal] /s/ OLIVER F. PRATT,
Clerk [216]

[Endorsed]: No. 14902. United States Court of Appeals for the Ninth Circuit. G. A. Miller, W. W. Lord, Ralph Smeed, L. H. Staus and Jack Smeed, Trustees of John W. Smeed Estate, Appellants, vs. Sam Wahyou, Diamond-S Ranch Co., Sam Wahyou, R. K. Nutting and Thomas G. Lee, as Trustees for the assets of Diamond-S Ranch Co., Thomas G. Lee, Toy Quong, Joe Sin, K. R. Nutting, Yip K. Toon and Herbert Jang, Appellees. Transcript of Record. Appeal from the United States District Court for the District of Nevada.

Filed: October 17, 1955.

/s/ PAUL P. O'BRIEN,

Clerk of the United States Court of Appeals for
the Ninth Circuit.

In the United States Court of Appeals
for the Ninth Circuit

No. 14902

G. A. MILLER, et al., Plaintiffs,
vs.

ARCHIE E. CORBARI, otherwise known as A. E.
CORBARI, et al., Appellees.

APPELLANTS' STATEMENT OF POINTS
AND DESIGNATION OF RECORD

Pursuant to Rule 17 (6) of the Rules of Practice of the United States Court of Appeals for the Ninth Circuit, appellants do hereby adopt the Statement of Points Upon Which Appellants Intend to Rely on Appeal and the Designation of Contents of Record on Appeal and Supplement to Designation of Contents of Record on Appeal heretofore filed, and appearing in the typewritten transcript of record, as their Statement of Points upon which they intend to rely on appeal and designation of contents of record on appeal.

PIKE & McLAUGHLIN,
SMITH & EWING,
CARVER, McCLENAHAN &
GREENFIELD,

/s/ By MILES N. PIKE,
Attorneys for Plaintiffs

[Endorsed]: Filed November 10, 1955. Paul P.
O'Brien, Clerk.